

APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the governor; to provide for a legislative management report; to provide a statement of legislative intent; 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, 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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,735,049	(\$312,475)	\$3,422,574
Operating expenses	343,710	(45,254)	298,456
Contingencies	5,000	5,000	10,000
Rough rider awards	10,800	0	10,800
Governor's salary	0	<u>265,928</u>	<u>265,928</u>
Total general fund	\$4,094,559	(\$86,801)	\$4,007,758
Full-time equivalent positions	18.00	0.00	18.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$46,457 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Governor's transition	\$65,000	\$0
Desktop hardware	<u>45,200</u>	<u>0</u>
Total general fund	\$110,200	\$0

SECTION 4. APPROPRIATION - GOVERNOR'S OFFICE - LEGISLATIVE MANAGEMENT REPORT. In addition to the amounts appropriated to the governor's office in section 1 of this Act, there is appropriated to the governor's office, any additional income from federal or other funds which may become available to the governor's office, for the biennium beginning July 1, 2017, and ending June 30, 2019. Any funds received under this section must be used for the specific purpose intended for the funds or transferred to the appropriate state agency or institution. Upon the receipt of funds under this section, the governor's office shall provide a report to the

legislative management regarding the source, amount, and purpose of the funds received.

SECTION 5. LEGISLATIVE INTENT - GOVERNOR'S SALARY - EXEMPTION. It is the intent of the sixty-fifth legislative assembly that the governor accept the governor's salary under section 54-07-04 for the biennium beginning July 1, 2017, and ending June 30, 2019. If the governor chooses to not accept the salary or any portion of the salary for the governor pursuant to section 54-07-04, section 54-07-04 does not apply and the related funding included in the governor's salary line item in section 1 of this Act may not be spent and must be canceled pursuant to section 54-44.1-11 at the end of the biennium beginning July 1, 2017, and ending June 30, 2019.

Approved April 27, 2017

Filed April 28, 2017

CHAPTER 2**HOUSE BILL NO. 1002**

(Appropriations Committee)

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 16.1-08.1-03.1, subsection 7 of section 54-09-04, and section 54-09-12 of the North Dakota Century Code, relating to campaign disclosure statements, information preparation fees, and confidential information in filed records.

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, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

SECRETARY OF STATE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,903,514	(\$250,750)	\$4,652,764
Operating expenses	2,053,162	657,856	2,711,018
Petition review	8,000	0	8,000
Election reform	<u>2,703,535</u>	<u>(1,510,880)</u>	<u>1,192,655</u>
Total all funds	\$9,668,211	(\$1,103,774)	\$8,564,437
Less estimated income	<u>3,583,536</u>	<u>(539,381)</u>	<u>3,044,155</u>
Total general fund	\$6,084,675	(\$564,393)	\$5,520,282
Full-time equivalent positions	34.00	(2.00)	32.00

Subdivision 2.

SECRETARY OF STATE - PUBLIC PRINTING

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Public printing	\$290,045	(\$1,595)	\$288,450
Total general fund	\$290,045	(\$1,595)	\$288,450

Subdivision 3.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$6,374,720	(\$565,988)	\$5,808,732

Grand total special funds	<u>3,583,536</u>	<u>(539,381)</u>	<u>3,044,155</u>
Grand total all funds	\$9,958,256	(\$1,105,369)	\$8,852,887

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in subdivision 1 of section 1 of this Act includes the sum of \$84,948, of which \$82,477 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Technology project	<u>\$3,050,000</u>	<u>\$0</u>
Total general fund	\$3,050,000	\$0

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, 2017, 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, 2017, and ending June 30, 2019.

SECTION 5. AMENDMENT. Section 16.1-08.1-03.1 of the North Dakota Century Code as amended by section 6 of Senate Bill No. 2343, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

16.1-08.1-03.1. ~~Special requirements for statements required of measure committees circulating or promoting passage or defeat of initiated or referred measure~~persons engaged in activities regarding ballot measures.

1. For each reportable contribution and expenditure under section 5 of this Act, the threshold for reporting is one hundred dollars for any person ~~or measure committee circulating or promoting passage or defeat of an initiated or referred measure engaged in activities described in subdivision e of subsection 13 of section 16.1-08.1-01.~~
2. For contributions received from an out-of-state contributor, a person ~~or measure committee circulating or promoting passage or defeat of an initiated or referred measure engaged in activities described in subdivision e of subsection 13 of section 16.1-08.1-01~~ shall include the following information regarding ~~subcontributors each subcontributor that has stated a contribution is for the express purpose of furthering the passage or defeat of a ballot measure~~ in the statements required under section 5 of this Act:
 - a. A designation as to whether any person contributed in excess of one hundred dollars of the total contribution;
 - b. The name and mailing address of each subcontributor that contributed in excess of one hundred dollars of the total contribution;
 - c. The contribution amounts of each disclosed subcontributor; and

¹ Section 16.1-08.1-03.1 was also amended by section 1 of House Bill No. 1362, chapter 156, and section 6 of Senate Bill No. 2343, chapter 155.

- d. The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor.
3. An initiative and referendum sponsoring committee also shall file a disclosure statement by the date the secretary of state approves the petition for circulation, and shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year-end statements under section 5 of this Act .
4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.

SECTION 6. AMENDMENT. Subsection 7 of section 54-09-04 of the North Dakota Century Code is amended and reenacted as follows:

7. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, ~~an amount established by the secretary of state to recover the actual cost for assembling and providing the information in the format requested~~ forty dollars for each record type requested. Unless otherwise agreed to by the secretary of state, the information must be provided in an electronic format. If provided in a paper format, an additional fee of fifty cents per page may be charged.

SECTION 7. AMENDMENT. Section 54-09-12 of the North Dakota Century Code is amended and reenacted as follows:

54-09-12. Confidential information in filed records.

1. A social security number or federal tax identification number disclosed or contained in any record filed with the secretary of state is confidential. However, a social security number or federal tax identification number may be released as authorized in this section or by other state or federal law.
2. The secretary of state shall delete or obscure a social security or federal tax identification number before a copy of any record is released to the public. ~~A filing office or an officer or employee of the filing office~~ The secretary of state, or an employee, agent, or contractor of the secretary of state's office, may not be held civilly or criminally liable for the inadvertent disclosure of a social security or federal tax identification number if the filer has placed the number in an improper field on the form prescribed by the secretary of state or the filer submitted a filing other than on the form prescribed by the secretary of state.
3. The secretary of state or an employee, agent, or contractor of the secretary of state's office may release a social security number or federal tax identification number to another public entity or the public entity's agents, employees, or contractors if disclosure is necessary for the receiving public entity to perform the receiving public entity's duties and responsibilities. The receiving public entity and the receiving public entity's agents, employees, and contractors shall maintain the confidential status of the social security number or federal tax identification number.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 3**HOUSE BILL NO. 1003**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to provide a contingent appropriation; to provide exemptions; to authorize fees; to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to electronic pull tab device requirements; to amend and reenact section 27-01-10 of the North Dakota Century Code, relating to fee assessments for funding crime victim and witness programs; to provide a statement of legislative intent; to provide for 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 attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$40,503,865	\$675,178	\$41,179,043
Operating expenses	24,672,585	(8,315,304)	16,357,281
Capital assets	2,339,187	403,185	2,742,372
Grants	1,762,659	677,341	2,440,000
Litigation fees	50,000	100,000	150,000
Intellectual property attorney	418,323	8,601	426,924
Abortion litigation fees	400,000	(400,000)	0
Medical examinations	660,000	0	660,000
North Dakota lottery	5,282,778	54,019	5,336,797
Arrest and return of fugitives	10,000	0	10,000
Gaming commission	7,490	0	7,490
Criminal justice information sharing	4,151,701	(765,056)	3,386,645
Law enforcement	3,455,725	(554,117)	2,901,608
SAVIN cost-share program	0	315,000	315,000
Total all funds	\$83,714,313	(\$7,801,153)	\$75,913,160
Less estimated income	<u>35,247,452</u>	<u>(4,005,132)</u>	<u>31,242,320</u>
Total general fund	\$48,466,861	(\$3,796,021)	\$44,670,840
Full-time equivalent positions	250.00	(13.00)	237.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$645,074, of which \$590,945 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly adjusted for

the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Bureau of criminal investigation vehicles	\$332,000	\$0
Grants	500,000	0
Higher education legal services	600,000	0
Criminal justice information sharing	957,856	0
Targeted equity - bureau of criminal investigation	1,276,301	0
Targeted equity - gaming	270,000	0
SAVIN cost-share program	0	315,000
Uniform crime reporting rewrite	0	280,000
DOS-based deposit system rewrite	0	100,000
Total all funds	\$3,936,157	\$695,000
Total special funds	<u>653,333</u>	<u>595,000</u>
Total general fund	\$3,282,824	\$100,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The attorney general shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. TOBACCO SETTLEMENT TRUST FUND - USE. The estimated income line item in section 1 of this Act includes \$200,000 from the tobacco settlement trust fund which the attorney general may use for the purpose of enforcing the master settlement agreement and any disputes with the agreement, during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. INDUSTRIAL COMMISSION LITIGATION FUNDS - ATTORNEY GENERAL PROTEST-RELATED EXPENSES - REPORT TO BUDGET SECTION. The attorney general may submit litigation-related expenses to the industrial commission which the industrial commission shall pay from litigation funding available to the industrial commission for expenses incurred by the attorney general as a result of the protests and related activities associated with the Dakota access pipeline project. The attorney general shall report quarterly to the budget section of the legislative management regarding all expenditures for litigation-related expenses from the industrial commission's litigation fund during the 2017-18 interim.

SECTION 6. LEGISLATIVE INTENT - DAKOTA ACCESS PIPELINE PROJECT PROTEST-RELATED COSTS. It is the intent of the sixty-fifth legislative assembly that the attorney general pursue all reasonable and available options to recoup all costs and expenses incurred by the state and its political subdivisions as a result of the protests and related activities associated with the Dakota access pipeline project.

SECTION 7. ADDITIONAL INCOME - APPROPRIATION - REPORT. In addition to the amounts appropriated to the attorney general in section 1 of this Act, there is appropriated from federal or other funds, the sum of \$250,000, or so much of the sum as may be necessary, to the attorney general for the purposes of defraying the expenses of the office, for the biennium beginning July 1, 2017, and ending June 30, 2019. The attorney general shall notify the office of management and budget and the legislative council of any funding made available pursuant to this section.

SECTION 8. BUDGETARY SAVINGS - CONTINGENT ALLOCATION FROM BOARD OF UNIVERSITY AND SCHOOL LANDS - FUNDING FOR STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION PROGRAM ENHANCEMENTS - APPROPRIATION. Of the funds appropriated in section 1 of this Act for rent expense, the attorney general shall use up to \$500,000 made available

from rent savings as a result of the attorney general relocating a portion of its operations to the job service North Dakota central office building, for the purpose of enhancing the statewide automated victim information and notification program, as defined in section 12.1-34-01, to provide the notifications necessary to comply with section 25 of article I of the Constitution of North Dakota, for the biennium beginning July 1, 2017, and ending June 30, 2019. If the attorney general does not relocate a portion of its operations to the job service North Dakota central office building and does not realize rent savings, the board of university and school lands, from funds designated in subsection 3 of section 5 of chapter 463 of the 2015 Session Laws, shall provide a grant of up to \$500,000 to the attorney general, the sum of which is appropriated, for the purpose of defraying the expenses of enhancing the statewide automated victim information and notification program, as defined in section 12.1-34-01, to provide the notifications necessary to comply with section 25 of article I of the Constitution of North Dakota, for the period beginning with the effective date of this Act, and ending June 30, 2019.

SECTION 9. STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION PROGRAM ENHANCEMENTS - COST-SHARING PROGRAM - ESTIMATED INCOME. The attorney general, in consultation with the North Dakota association of counties and the North Dakota league of cities, shall establish a cost-sharing program to defray the expenses related to the enhancement of the statewide automated victim information and notification program, in addition to the amounts appropriated in section 9 of this Act. The cost-sharing program must apportion the sum of \$315,000 among the political subdivisions of the state for each political subdivision's share of the cost of the statewide automated victim information and notification program and the political subdivision shall contribute funds to the attorney general as set forth in the cost-sharing program. The estimated income line item in section 1 of this Act includes \$315,000 of funding received as payments from political subdivisions for the cost-sharing program for the purpose of enhancing the statewide automated victim information and notification program, as defined in section 12.1-34-01, to provide the notifications necessary to comply with section 25 of article I of the Constitution of North Dakota, for the period beginning with the effective date of this Act, and ending June 30, 2019.

SECTION 10. LEGISLATIVE INTENT - COST-SHARING PROGRAM. It is the intent of the sixty-fifth legislative assembly that the funding for the political subdivision's cost-sharing program identified in section 9 of this Act, be provided from any additional income collected from the victim witness fee as required in section 11 of this Act, or a proportionate contribution from the counties and cities that utilize the odyssey system, or a combination of both.

SECTION 11. AMENDMENT. Section 27-01-10 of the North Dakota Century Code is amended and reenacted as follows:

27-01-10. Fee assessments for funding crime victim and witness programs.

1. The governing body of a county ~~may~~shall, by resolution, authorize the district judges serving that county to assess a fee under subsection 3 of not more than twenty-five dollars as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment.
2. The governing body of a city ~~may~~shall, by ordinance, authorize a municipal judge to assess a fee under subsection 3 of not more than twenty-five dollars as part of a sentence imposed on a defendant who pleads guilty to or is

convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment.

3. The governing body of the county or city may shall determine the amount of the fee to be assessed in all cases or it may authorize the district or municipal judge to determine the amount of the fee to be assessed in each case. The fee assessed under this section is in addition to any fine, penalty, costs, or administrative fee prescribed by law. The district or municipal judge may shall assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to a district or municipal court under this section must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to one or more of the following programs as determined by the governing body or by agreement of the attorney general, the North Dakota league of cities, and the North Dakota association of counties:
 - a. A private, nonprofit domestic violence or sexual assault program.
 - b. A victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.
 - c. The statewide automated victim information and notification system, as provided for under chapter 12.1-34.

SECTION 12. A new section to chapter 53-06.1 of the North Dakota Century Code is created and enacted as follows:

Electronic pull tab device requirements.

An electronic pull tab device must display an electronic pull tab in which the player may win credits that can be redeemed for cash or used to purchase more pull tabs. The device may not directly dispense coins, cash, tokens, or anything else of value other than a credit ticket voucher.

SECTION 13. CRIMINAL HISTORY RECORD CHECKS - FEES. Any person or entity requesting a criminal history record check from the bureau of criminal investigation, as a result of legislation enacted by the sixty-fifth legislative assembly, shall pay a reasonable fee established by the attorney general to the attorney general to be deposited in the state's general fund for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. EXEMPTION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. The amount appropriated to the attorney general from the strategic investment and improvements fund for awarding grants to law enforcement agencies, for crime-related needs of the attorney general's office, and for development of a uniform law enforcement and custody manual, as contained in section 11 of chapter 471 of the 2013 Session Laws and as continued in section 5 of chapter 37 of the 2015 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for crime-related needs of the attorney general's office, during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 15. EXEMPTION - HUMAN TRAFFICKING GRANTS. The amount appropriated to the attorney general from the general fund for providing human

trafficking grants as contained in section 1 of chapter 375 of the 2015 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for providing grants to organizations involved in providing prevention and treatment services related to human trafficking victims, during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 16. EXEMPTION - ATTORNEY GENERAL REFUND FUND.

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, 2017.

SECTION 17. EXEMPTION - ADDITIONAL FUNDING FOR LITIGATION FEES.

Of the funding appropriated to the attorney general in section 6 of chapter 3 of the 2015 Session Laws, up to \$100,000 is not subject to the provisions of section 54-44.1-11 and may be continued for defraying the cost of litigation fees for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 18. EMERGENCY. Sections 5, 8, and 9 of this Act are declared to be an emergency measure.

Approved April 26, 2017

Filed April 27, 2017

CHAPTER 4

HOUSE BILL NO. 1005

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state treasurer; and to amend and reenact subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to coal severance tax allocations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state treasurer for the purpose of defraying the expenses of the state treasurer, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,427,333	(\$111,194)	\$1,316,139
Operating expenses	200,614	50,646	251,260
Coal severance payments	228,952	(48,952)	180,000
Total general fund	\$1,856,899	(\$109,500)	\$1,747,399
Full-time equivalent positions	8.00	(1.00)	7.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$21,239 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Information technology costs	\$65,699	\$0
Property tax relief	233,425,000	0
Non-oil transportation funding	<u>7,676,000</u>	<u>0</u>
Total general fund	\$241,166,699	\$0

2 SECTION 4. AMENDMENT. Subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

- b. If the tippie of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in

² Section 57-62-02 was also amended by section 21 of Senate Bill No. 2014, chapter 39, section 1 of Senate Bill No. 2101, chapter 403, and section 8 of Senate Bill No. 2272, chapter 368.

this subdivision. For purposes of this subdivision, the production limitation is ~~three million eight hundred thousand tons [3447302.02 metric tons] through calendar year 1995, three million six hundred thousand tons [3265865.07 metric tons] in calendar years 1996 and 1997, and three million four hundred thousand tons [3084428.12 metric tons] in calendar years after 1997~~ three million four hundred thousand tons [3084428.12 metric tons] through calendar year 2017 and three million tons [2721554.22 metric tons] after calendar year 2017. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:

- (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
- (2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.
- (3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the

coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.

- (4) For the purposes of this subdivision:
- (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
 - (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.
 - (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
 - (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
 - (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.
- (5) The state treasurer shall allocate funds provided by legislative appropriation to cities, the county general fund, and school districts within a coal-producing county according to the allocation method provided in subdivision a in an amount to offset fifty percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county under this subdivision in the previous calendar year for the payments through calendar year 2018 and to offset thirty percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county under this subdivision in the previous calendar year for payments after calendar year 2018. The state treasurer shall make the allocation and distribute the funds, within the limits of legislative appropriations, under this paragraph during the first month of each calendar year. The state treasurer shall include in each biennial budget request the amounts estimated to be necessary for the biennium for purposes of this paragraph, based on the allocations under this subdivision in the most recent calendar years.

Approved April 19, 2017

Filed April 20, 2017

CHAPTER 5**HOUSE BILL NO. 1006**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the tax commissioner and for payment of state reimbursement under the homestead tax credit and disabled veterans' credit; to provide for a continuing appropriation; to provide for transfers; to provide an exemption; to create and enact a new section to chapter 57-01 of the North Dakota Century Code, relating to a multistate tax audit fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the tax commissioner for the purpose of defraying the expenses of the tax commissioner and paying the state reimbursement under the homestead tax credit and disabled veterans' credit, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$21,528,135	\$195,869	\$21,724,004
Operating expenses	7,628,262	(878,967)	6,749,295
Capital assets	16,000	(10,000)	6,000
Homestead tax credit	18,690,000	(3,890,000)	14,800,000
Disabled veterans' credit	<u>7,175,091</u>	<u>935,109</u>	<u>8,110,200</u>
Total all funds	\$55,037,488	(\$3,647,989)	\$51,389,499
Less estimated income	<u>125,000</u>	<u>0</u>	<u>125,000</u>
Total general fund	\$54,912,488	(\$3,647,989)	\$51,264,499
Full-time equivalent positions	136.00	(3.00)	133.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$353,067 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Scanners <u>\$8,000</u>	<u>\$0</u>	
Total general fund	\$8,000	\$0

SECTION 4. LINE ITEM TRANSFERS - 2015-17 BIENNIUM. The state tax commissioner may transfer funds between the homestead tax credit and disabled veterans' tax credit line items in section 1 of chapter 40 of the 2015 Session Laws if one line item does not have sufficient funds available for state reimbursement of eligible tax credits. The state tax commissioner shall notify the office of management and budget and the legislative council of any transfers made pursuant to this section.

SECTION 5. LINE ITEM TRANSFERS - 2017-19 BIENNIUM. The state tax commissioner may transfer funds between the homestead tax credit and disabled veterans' tax credit line items in section 1 of this Act if one line item does not have sufficient funds available for state reimbursement of eligible tax credits. The state tax commissioner shall notify the office of management and budget and the legislative council of any transfers made pursuant to this section.

SECTION 6. 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 \$2,016,120 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of these taxes for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. EXEMPTION - SALES TAX AUDIT POSITION. Up to \$75,000 of the amount appropriated from the general fund to the tax commissioner in section 1 of chapter 40 of the 2015 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this amount are available to provide salaries and wages funding for a sales tax audit position during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 8. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted as follows:

Multistate tax audit fund - Continuing appropriation - Transfers to the general fund.

There is created in the state treasury the multistate tax audit fund. The fund consists of all moneys collected and received by the tax commissioner as a result of participation in the multistate tax commission audit and nexus programs. All moneys in the fund are appropriated to the tax commissioner on a continuing basis to pay the multistate tax commission audit and nexus program fees. On or before June thirtieth of each year, the tax commissioner shall certify to the state treasurer the amount of accumulated funds in the multistate tax audit fund which exceed the audit and nexus program fees for the following year. The state treasurer shall transfer the certified amount from the multistate tax audit fund to the general fund prior to the end of each fiscal year.

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

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 6

HOUSE BILL NO. 1007

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of labor and human rights; to amend and reenact sections 14-02.4-15 and 34-14-09 of the North Dakota Century Code, relating to discriminatory practices in public services and employee claims for wages; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of labor and human rights for the purpose of defraying the expenses of the department of labor and human rights, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$2,423,746	(\$8,762)	\$2,414,984
Operating expenses	<u>361,327</u>	<u>(32,409)</u>	<u>328,918</u>
Total all funds	\$2,785,073	(\$41,171)	\$2,743,902
Less estimated income	<u>437,832</u>	<u>2,084</u>	<u>439,916</u>
Total general fund	\$2,347,241	(\$43,255)	\$2,303,986
Full-time equivalent positions	15.00	(1.00)	14.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$37,165 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. AMENDMENT. Section 14-02.4-15 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-15. Public services - Discriminatory practices.

1. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to ~~a person~~ an individual access to the use of and benefit thereof, or to give adverse or unequal treatment to ~~a person~~ an individual in connection therewith because of the ~~person's~~ individual's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.
2. Subsection 1 does not apply to:
 - a. An individual committed to the legal and physical custody of the department of corrections and rehabilitation; or
 - b. An individual confined in a correctional facility, as defined in section 12-44.1-01.

SECTION 4. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies - Limitation on wages collectible.

1. An employee may file with the department a claim for wages due under this chapter or under chapter 34-06 ~~with the department not later than if the filing is made within~~ two years from the date the wages are due and the amount of the wages claimed due is at least one hundred twenty-five dollars but not more than fifteen thousand dollars. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. ~~Whenever~~ If the department denies the claim for wages due because the amount claimed is less than one hundred twenty-five dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in small claims court under chapter 27-08.1. If the department denies the claim for wages due because the amount claimed is more than fifteen thousand dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in district court under chapter 27-05.
2. If the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by ~~any of~~ the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.
3. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. ~~With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.~~

SECTION 5. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 2019, and after that date is ineffective.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 7

HOUSE BILL NO. 1008

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public service commission; to amend and reenact section 57-43.2-19 of the North Dakota Century Code, relating to the special fuels excise taxes distribution of funds; to provide for a legislative management study; and to authorize transfers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the public service commission for the purpose of defraying the expenses of the public service commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,643,095	(\$445,811)	\$9,197,284
Operating expenses	1,877,562	(47,736)	1,829,826
Capital assets	26,400	(16,400)	10,000
Grants	20,000	0	20,000
Abandoned mined lands contractual	8,000,000	(2,000,000)	6,000,000
Rail rate complaint case	900,000	0	900,000
Railroad safety program	523,345	41,323	564,668
Specialized legal services	<u>150,000</u>	<u>380,000</u>	<u>530,000</u>
Total all funds	\$21,140,402	(\$2,088,624)	\$19,051,778
Less estimated income	<u>13,964,575</u>	<u>(1,543,559)</u>	<u>12,421,016</u>
Total general fund	\$7,175,827	(\$545,065)	\$6,630,762
Full-time equivalent positions	46.00	(1.00)	45.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$116,809, of which \$70,945 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Specialized legal services	\$575,624	\$436,000
Total all funds	\$575,624	\$436,000
Total special funds	<u>336,000</u>	<u>436,000</u>
Total general fund	\$239,624	\$0

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The public service commission shall report to the

appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. TRANSFER AND REPAYMENT - BEGINNING FARMER REVOLVING LOAN FUND. The Bank of North Dakota shall transfer from the beginning farmer revolving loan fund to the public service commission the sum of \$900,000, or so much of the sum as may be necessary, included in the estimated income line item in section 1 of this Act to pay for costs associated with a rail rate complaint case. Transfers must be made during the biennium beginning July 1, 2017, and ending June 30, 2019, upon order of the commission. If any amounts are spent pursuant to this section, the public service commission shall reimburse the beginning farmer revolving loan fund using amounts available from damages or proceeds received, net of legal fees, from a successful outcome of a rail complaint case.

SECTION 5. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. The estimated income line item in section 1 of this Act includes \$100,000, of one-time funding from the strategic investment and improvements fund for specialized legal service costs during the biennium beginning July 1, 2017, and ending June 30, 2019.

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

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

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

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

SECTION 7. LEGISLATIVE MANAGEMENT STUDY - IMPACT OF WIND ENERGY.

1. During the 2017-18 interim, the legislative management shall consider studying the impact of wind energy development on the environment, addressing and researching issues common to North Dakota landowners, and identifying potential issues for legislation. The study may include consideration of:
 - a. The impact of wind energy development on the environment, including aesthetic impacts;
 - b. The impact of wind energy development on property values;
 - c. The impact of wind energy development on agriculture;

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- d. The advantages and disadvantages of implementing legislation for pooling or unitization of wind resources similar to that of the oil and gas industry in chapter 38-08; and
 - e. The necessary processes for the decommissioning of a wind energy project.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 8

HOUSE BILL NO. 1009

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to provide for a transfer; to provide for a report; and to amend and reenact sections 4.1-16-06 and 4.1-16-07 of the North Dakota Century Code, relating to beekeeper license fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the agriculture commissioner for the purpose of defraying the expenses of the agriculture commissioner, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,534,265	(\$161,316)	\$12,372,949
Operating expenses	6,419,121	1,025,215	7,444,336
Capital assets	8,000	5,000	13,000
Grants	8,392,774	545,000	8,937,774
Board of animal health	1,006,773	(141,055)	865,718
Wildlife services	1,401,257	6,743	1,408,000
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	<u>400,000</u>	<u>(200,000)</u>	<u>200,000</u>
Total all funds	\$30,237,190	\$1,079,587	\$31,316,777
Less estimated income	<u>20,276,053</u>	<u>1,931,623</u>	<u>22,207,676</u>
Total general fund	\$9,961,137	(\$852,036)	\$9,109,101
Full-time equivalent positions	77.00	(4.00)	73.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$188,477, of which \$101,972 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Information technology analysis	\$100,222	\$0
Department web redesign	50,000	0
National genomics center	711,138	120,000
Federal environmental law impact review	0	<u>1,000,000</u>
Total all funds	\$861,360	\$1,120,000

Less estimated income	0	<u>1,120,000</u>
Total general fund	\$861,360	\$0

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND - MINOR USE PESTICIDE FUND. The agriculture commissioner shall transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$6,446,503 from the environment and rangeland protection fund for the purpose of defraying the expenses of various department of agriculture programs, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. ESTIMATED INCOME - GAME AND FISH FUND. The estimated income line item in section 1 of this Act includes the sum of \$614,430 from the game and fish department operating fund for the purpose of defraying the expenses of various department of agriculture programs, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. ESTIMATED INCOME - STATE WATER COMMISSION - TRANSFER. The estimated income line item in section 1 of this Act includes the sum of \$125,000 which the state water commission shall transfer to the agriculture commissioner for the wildlife services program, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 8. WATERBANK PROGRAM - MATCHING FUNDS. The salaries and wages line item in section 1 of this Act includes \$50,000 from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

SECTION 9. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - FEDERAL ENVIRONMENTAL LAW IMPACT REVIEW FUND - ESTIMATED INCOME. The estimated income line item in section 1 of this Act includes a sum of \$1,000,000, which the office of management and budget shall transfer from the strategic investment and improvements fund to the federal environmental law impact review fund for the use by the agriculture commissioner, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 10. ESTIMATED INCOME - PIPELINE RESTORATION AND RECLAMATION. The estimated income line item in section 1 of this Act includes the sum of \$200,000 from the abandoned oil and gas well plugging and site reclamation fund for the purpose of defraying the expenses of the pipeline restoration and reclamation program, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. AMENDMENT. Section 4.1-16-06 of the North Dakota Century Code is amended and reenacted as follows:

4.1-16-06. License fee.

The fee for a beekeeper's license is five dollars. All fees collected must be deposited in the agriculture commissioner operating fund.

SECTION 12. AMENDMENT. Section 4.1-16-07 of the North Dakota Century Code is amended and reenacted as follows:

4.1-16-07. Colony assessment.

In addition to the license fee required by section 4.1-16-06, an applicant for a license must submit a colony assessment in an amount equal to fifteen cents multiplied by the maximum number of colonies listed in the application. All fees collected must be deposited in the agriculture commissioner operating fund.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 9

HOUSE BILL NO. 1010

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; to provide an appropriation for the distribution of funds from the insurance tax distribution fund; to provide a transfer; and to amend and reenact section 18-04-05 of the North Dakota Century Code, relating to payments to fire departments from the insurance tax distribution fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the insurance commissioner for the purpose of defraying the expenses of the insurance commissioner, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,943,097	(\$393,530)	\$8,549,567
Operating expenses	<u>2,512,042</u>	<u>(332,265)</u>	<u>2,179,777</u>
Total special funds	\$11,455,139	(\$725,795)	\$10,729,344
Full-time equivalent positions	49.50	(3.50)	46.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$124,767 from other funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Boiler inspection software program	\$90,000	\$0
Computerized database for firefighters	130,000	0
Total special funds	\$220,000	\$0

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$15,064,086 or so much of the sum as may be necessary, to the insurance commissioner for the purpose of providing payments, in accordance with provisions of section 18-04-05, to North Dakota fire departments in the amount of \$14,235,561 and payments to the North Dakota firefighter's association in the amount of \$828,525 for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. BONDING FUND. Section 1 of this Act includes \$52,004 from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. FIRE AND TORNADO FUND. Section 1 of this Act includes \$1,797,218 from the state fire and tornado fund to pay fire and tornado fund administrative expenses, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. UNSATISFIED JUDGMENT FUND. Section 1 of this Act includes \$29,703 from the state unsatisfied judgment fund to pay unsatisfied judgment fund administrative expenses for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 8. PETROLEUM RELEASE COMPENSATION FUND. Section 1 of this Act includes \$119,472 from the petroleum release compensation fund to pay petroleum release compensation fund administrative expenses for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 9. TRANSFER - INSURANCE TAX DISTRIBUTION FUND - GENERAL FUND. Notwithstanding section 7 of chapter 50 of the 2015 Session Laws, any amounts in the insurance tax distribution fund continued into the 2017-19 biennium pursuant to section 7 of chapter 50 of the 2015 Session Laws, must be transferred to the general fund on August 1, 2017.

SECTION 10. AMENDMENT. Section 18-04-05 of the North Dakota Century Code is amended and reenacted as follows:

18-04-05. Amount due cities, rural fire protection districts, or rural fire departments - Transfer to firefighters death benefit fund - Disbursement to North Dakota firefighter's association - Payments by insurance commissioner.

1. The insurance commissioner shall disburse funds in the insurance tax distribution fund as provided under this section.
2. The insurance commissioner shall transfer an amount of up to fifty thousand dollars per biennium, as may be necessary, to the firefighters death benefit fund for distribution under chapter 18-05.1.
3. The insurance commissioner shall disburse funds to the North Dakota firefighter's association for uses authorized under chapter 18-03, subject to legislative appropriations.
4. The insurance commissioner shall compute the amounts due to the certified city fire departments, certified rural fire departments, or certified fire protection districts entitled to benefits under this chapter on or before December first of each year. The insurance commissioner shall allocate one-half of the biennial legislative appropriation which must be based on an amount equal to one hundred percent of the total premium tax collected for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, and crop hail insurance, less the amount transferred to the firefighters death benefit fund and the amount distributed to the North Dakota firefighter's association for distribution under this subsection, to each eligible city not within a certified fire protection district, each certified rural fire protection district organized under this title, and each rural fire department certified by the state fire marshal, and pay the amount allocated in December of each year. The allocation must be made in proportion to the amount of insurance company premiums received by insurance companies pursuant to section 26.1-03-17 for policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, and crop hail insurance

on property within the city, certified rural fire protection district, or area served by the certified rural fire department to the total of those premiums for those policies in the state.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 10

HOUSE BILL NO. 1011

(Appropriations Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the securities department for the purpose of defraying the expenses of the securities department, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,801,279	\$47,388	\$1,848,667
Operating expenses	<u>459,502</u>	<u>46,545</u>	<u>506,047</u>
Total all funds	\$2,260,781	\$93,933	\$2,354,714
Less estimated income	<u>170,000</u>	<u>0</u>	<u>170,000</u>
Total general fund	\$2,090,781	\$93,933	\$2,184,714
Full-time equivalent positions	9.00	0.00	9.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$23,892 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 11**HOUSE BILL NO. 1012**

(Appropriations Committee)

AN ACT to provide appropriations for defraying the expenses of the department of human services; to authorize the department of human services to convey land in Walsh County; to amend and reenact subsection 1 of section 23-09.3-01.1, subsection 1 of section 23-16-01.1, section 50-24.1-37, and subsection 1 of section 54-27-25 of the North Dakota Century Code, relating to the moratorium on basic care, nursing facility bed capacity, Medicaid expansion, and tobacco settlement trust fund transfers; to repeal section 50-24.1-37 of the North Dakota Century Code, relating to the Medicaid expansion program; to provide for exemptions; to provide statements of legislative intent; to provide for reports to the legislative management; to provide for legislative management studies; to authorize transfers; to provide an expiration date; to provide a contingent effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

MANAGEMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$28,049,386	(\$1,769,247)	\$26,280,139
Operating expenses	87,542,966	72,572,860	160,115,826
Capital assets	26,000	(26,000)	0
Grants	0	204,000	204,000
Total all funds	\$115,618,352	\$70,981,613	\$186,599,965
Less estimated income	<u>71,324,758</u>	<u>58,154,800</u>	<u>129,479,558</u>
Total general fund	\$44,293,594	\$12,826,813	\$57,120,407

Subdivision 2.

PROGRAM AND POLICY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$58,102,898	\$3,667,008	\$61,769,906
Operating expenses	107,383,843	17,338,098	124,721,941
Capital assets	0	10,000	10,000
Grants	457,953,280	(24,485,621)	433,467,659
Grants - medical assistance	2,384,560,568	213,559,361	2,598,119,929
Total all funds	\$3,008,000,589	\$210,088,846	\$3,218,089,435

Less estimated income	<u>1,995,024,801</u>	<u>165,841,615</u>	<u>2,160,866,416</u>
Total general fund	\$1,012,975,788	\$44,247,231	\$1,057,223,019

Subdivision 3.

FIELD SERVICES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Human service centers	\$198,888,443	(\$2,838,954)	\$196,049,489
Institutions	<u>139,587,498</u>	<u>833,726</u>	<u>140,421,224</u>
Total all funds	\$338,475,941	(\$2,005,228)	\$336,470,713
Less estimated income	<u>132,820,302</u>	<u>5,723,403</u>	<u>138,543,705</u>
Total general fund	\$205,655,639	(\$7,728,631)	\$197,927,008

Subdivision 4.

COUNTY SOCIAL SERVICE FINANCING

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
County social service financing	\$0	<u>\$26,000,000</u>	<u>\$26,000,000</u>
Total all funds	\$0	\$26,000,000	\$26,000,000
Less estimated income	<u>0</u>	<u>0</u>	<u>0</u>
Total general fund	\$0	\$26,000,000	\$26,000,000

Subdivision 5.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$1,262,925,021	\$75,345,413	\$1,338,270,434
Grand total special funds	<u>2,199,169,861</u>	<u>229,719,818</u>	<u>2,428,889,679</u>
Grand total all funds	\$3,462,094,882	\$305,065,231	\$3,767,160,113
Full-time equivalent positions	2,211.08	(54.85)	2,156.23

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$5,914,453, of which \$4,962,381 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriations in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Developmental disabilities equipment	\$10,000	\$0
Heating plant repairs and upgrades - state hospital	1,156,000	0
Heating plant repairs and upgrades - life skills and transition center	75,000	0
Window replacement - life skills and transition center	44,000	0
Equipment over \$5,000 - state hospital	275,000	0
Equipment over \$5,000 - life skills and transition center	200,000	0
Extraordinary repairs - state hospital	1,000,000	0

Extraordinary repairs - life skills and transition center	1,250,000	0
Assistive technology services	80,000	0
Modification of eligibility systems	60,872,269	0
Medicaid expansion - fee schedule enhancement	0	226,000,000
County social services pilot program	0	26,000,000
Child care licensing and data system	0	3,000,000
Health information network/care coordination	0	40,800,000
Total all funds	\$64,962,269	\$295,800,000
Less estimated income	<u>46,870,102</u>	<u>269,800,000</u>
Total general fund	\$18,092,167	\$26,000,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of human services shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.

Notwithstanding section 54-16-04, the department of human services may transfer appropriation authority between line items within subdivisions 1, 2, and 3 of section 1 of this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The department of human services shall notify the office of management and budget and the legislative council of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2018, any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-sixth legislative assembly regarding any transfers made pursuant to this section.

SECTION 5. EXEMPTION. The amount appropriated for the replacement of the Medicaid management information system and related projects in chapter 50 of the 2007 Session Laws and chapter 38 of the 2011 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from these appropriations approved under section 54-44.1-11 for continuation into the 2009-11 biennium and then the 2011-13 biennium and then the 2013-15 biennium and then the 2015-17 biennium are available for the completion of the Medicaid management information system and related projects during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. EXEMPTION. The amount appropriated for the modification of the department of human services' eligibility systems in chapter 578 of the 2011 Special Session Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation approved under section 54-44.1-11 for continuation into the 2013-15 biennium and then the 2015-17 biennium are available for the completion of the modification of the eligibility systems project during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. EXEMPTION. The amount appropriated for the development of the electronic health records system in chapter 12 of the 2013 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation approved under section 54-44.1-11 for continuation into the 2015-17 biennium are available for the completion of the electronic health records system during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 8. ESTIMATED INCOME. Of funds appropriated in section 1 of this Act, \$37,779,159 is from the tobacco prevention and control trust fund for the purpose of defraying expenses of the department of human services, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 9. ESTIMATED INCOME. Of funds appropriated in section 1 of this Act, \$1,686,191 is from the health care trust fund for the purpose of defraying expenses of long-term care services programs, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 10. ESTIMATED INCOME. Of funds appropriated in section 1 of this Act, \$18,000,000 is from the community health trust fund for the purpose of defraying expenses in the medical services division, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. APPROPRIATION - 2015-17 BIENNIUM. There is appropriated out of special funds derived from federal funds, not otherwise appropriated, the sum of \$9,000,000, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying medical assistance grant costs, for the period beginning with the effective date of this Act and ending June 30, 2017.

SECTION 12. APPROPRIATION - 2015-17 BIENNIUM - REBASING, OPERATING MARGINS, AND INCENTIVES. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$417,010, or so much of the sum as may be necessary, and from special funds derived from federal funds and other income, the sum of \$417,010, or so much of the sum as may be necessary, to the department of human services for the purpose of adjusting long-term care facility rates relating to rebasing, operating margins, and incentives, for the period beginning June 1, 2017, and ending June 30, 2017.

SECTION 13. APPROPRIATION - 2015-17 BIENNIUM - SUBSTANCE USE DISORDER VOUCHER PROGRAM. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying the expenses of the substance use disorder voucher program, for the period beginning with the effective date of this Act, and ending June 30, 2017.

SECTION 14. LEGISLATIVE INTENT - SUBSTANCE USE DISORDER VOUCHER PROGRAM - MEDICATION ASSISTED TREATMENT. It is the intent of the sixty-fifth legislative assembly that the department of human services include medication assisted treatment as an allowable service under the substance use disorder voucher program. It is also the intent that payments for medication dispensed as part of the treatment be established quarterly, based on the Medicaid allowed amount, plus a weekly dispensing and administration fee of no more than the dispensing fee established under the state's medical assistance program.

SECTION 15. LEGISLATIVE INTENT - RESTORATION FUNDING FOR BASIC CARE. It is the intent of the sixty-fifth legislative assembly that the funding appropriated to the department of human services for the restoration of basic care provider rates be prioritized in the following order:

1. Operating margin;
2. Medical leave days; and then
3. Increase to limits.

SECTION 16. LEGISLATIVE INTENT - MEDICAID EXPANSION - FEE SCHEDULE. It is the intent of the sixty-fifth legislative assembly that the one-time funding of \$226,000,000, of which \$13,300,000 is from the tobacco prevention and

control trust fund, provided for defraying a portion of the expenses of the Medicaid expansion program be used for establishing the provider fee schedule at the maximum level possible without exceeding the current levels of reimbursement for the Medicaid expansion contracted providers.

SECTION 17. LEGISLATIVE INTENT - POLICY CHANGES AND CLARIFICATION RELATED TO HOME HEALTH. It is the intent of the sixty-fifth legislative assembly that the department of human services adopt rules in accordance with the Medicaid program, face-to-face requirements for home health services; policy changes and clarifications related to home health final rule published by the centers for Medicare and Medicaid services on February 2, 2016; title 42, Code of Federal Regulations, part 440. It is further the intent of the legislative assembly that the department require certified home health agencies to ensure a face-to-face visit occurred between a physician and Medicaid beneficiary before initiating home health services, and to ensure a face-to-face visit between a physician or nonphysician provider occurred before providing medical equipment, supplies, and appliances. It is further the intent of the legislative assembly that the department adopt rules to define medical equipment, supplies, and appliances and specify allowable time frames for the face-to-face visits.

SECTION 18. LEGISLATIVE INTENT - CARE COORDINATION AGREEMENTS. It is the intent of the sixty-fifth legislative assembly that the department of human services establish requisite agreements with tribal health care organizations that will result in one hundred percent federal funding for eligible medical assistance provided to American Indians through care coordination agreements for the biennium beginning July 1, 2017, and ending July 30, 2019.

SECTION 19. CARE COORDINATION AGREEMENTS - HEALTH CARE TRUST FUND DEPOSITS. The department of human services shall deposit any federal funding received in excess of the state's regular federal medical assistance percentage resulting from the department establishing requisite agreements with tribal health care organizations in the health care trust fund for the biennium beginning July 1, 2017, and ending June 30, 2019. The department shall maintain a separate account within the health care trust fund for this funding.

SECTION 20. LEGISLATIVE INTENT - BRAIN INJURY - 1915(i) STATE PLAN AMENDMENT. It is the intent of the sixty-fifth legislative assembly that the department of human services include services for individuals with a brain injury as part of the comprehensive assessment for a Medicaid 1915(i) state plan amendment. The department may utilize existing funding available in the department's budget for enhancing services through a Medicaid 1915(i) state plan amendment for individuals with a brain injury for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 21. LEGISLATIVE INTENT - GRAFTON JOB SERVICE NORTH DAKOTA BUILDING PURCHASE. It is the intent of the sixty-fifth legislative assembly that the department of human services purchase the Grafton job service North Dakota building using donated funds for the use of the life skills and transition center, but only if anticipated revenues generated from use of the building will be sufficient to provide for the operating and maintenance costs of the building.

SECTION 22. CONVEYANCE OF LAND AUTHORIZED - LIFE SKILLS AND TRANSITION CENTER. The state of North Dakota by and through the department of human services may convey real property containing 3.46 acres, more or less, associated with the life skills and transition center in Grafton. The department may convey a parcel of land described as follows: the north fifty-eight feet of said north half of the southeast quarter of section twenty-five less the railroad right-of-way and

the south forty feet of the north ninety-eight feet of the west one hundred twenty-three feet of said north half of the southeast quarter of section twenty-five less the railroad right-of-way on the terms and conditions determined appropriate by the department and the attorney general. Section 54-01-05.2 and 54-01-05.5 do not apply to this conveyance.

SECTION 23. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES CASE MANAGEMENT. It is the intent of the sixty-fifth legislative assembly that the department of human services provide case management services for individuals with a developmental disability within the ratio provided pursuant to North Dakota Administrative Code for the biennium beginning July 1, 2017, and ending June 30, 2019. If case management services for individuals with a developmental disability exceed the ratio requirement provided in the North Dakota Administrative Code, the department may hire temporary staff or the department may propose a change to North Dakota Administrative Code to meet the ratio requirement.

SECTION 24. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - PROGRAMMATIC AND ADMINISTRATIVE REQUIREMENTS. It is the intent of the sixty-fifth legislative assembly that the department of human services report all new programmatic and administrative requirements to the centers for Medicare and Medicaid services and seek waivers of the same unless the director finds immediate full compliance necessary for individuals with disabilities.

SECTION 25. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - CONFLICT-FREE CASE MANAGEMENT. It is the intent of the sixty-fifth legislative assembly that the department of human services request waivers or delays of implementation of conflict-free case management rules and requirements for individuals with a developmental disability.

SECTION 26. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - VARIANCE. It is the intent of the sixty-fifth legislative assembly that during the 2017-19 biennium, the department of human services may authorize a treatment or care center's variance request relating to the treatment or care center's bedrooms or bathrooms, if the department determines the variance does not pose a health or safety risk. It is also the intent that the department of human services adopt rules to establish a variance process that allows the department to grant a variance if the variance will not pose a danger to the health or safety of an individual served by the treatment or care center.

SECTION 27. LEGISLATIVE INTENT - PROCESS AND OUTCOME MEASURES. It is the intent of the sixty-fifth legislative assembly that behavioral health service providers that receive funding from the department of human services submit process and outcome measures to the department for programs and services supported by state funding.

SECTION 28. LEGISLATIVE INTENT - TELEPHONE SUPPORT AND DIRECTORY SERVICES. It is the intent of the sixty-fifth legislative assembly that the vendor of telephone and directory services, under contract with the department of human services, include private behavioral health service providers in the vendor's directory at no cost to the private behavioral health service providers.

SECTION 29. REPORTING REQUIREMENTS - YOUTH ACCESS TO TOBACCO. The operating expenses line item in subdivision 2 of section 1 of this Act includes \$75,000 from the tobacco prevention and control trust fund for costs of complying with youth access to tobacco reporting requirements under title 45, Code of Federal Regulations, part 96, section 130, for the biennium beginning July 1, 2017,

and ending June 30, 2019. The state department of health and local public health units shall collect and disclose all required data reporting elements to the department of human services.

SECTION 30. ROBINSON RECOVERY CENTER FUNDING. Notwithstanding the designation of funding for the Robinson recovery center in the appropriation for the department of human services in section 1 of this Act, the department of human services may utilize other providers for substance use disorder treatment services if the current contractor is unable to provide the full capacity of services anticipated under the current contract for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 31. LEGISLATIVE INTENT - OPERATING EXPENSES. It is the intent of the sixty-fifth legislative assembly that the department of human services analyze its budgetary needs and allocate up to \$650,000 from the general fund included in the operating expenses line item in subdivision 1 of section 1 of this Act to other line items in subdivisions 1, 2, and 3 within section 1 of this Act based on the department's priorities resulting from its analysis.

SECTION 32. LEGISLATIVE MANAGEMENT STUDY - STATE MEDICAL ASSISTANCE PROGRAMS.

1. During the 2017-18 interim, the legislative management shall consider studying options to operate the state medical assistance program and other related programs, as managed care. The study must:
 - a. Identify and review populations to consider for managed care, including individuals eligible under traditional medical assistance, Medicaid expansion, the children's health insurance program, and individuals receiving services through the long-term care and developmental disabilities programs.
 - b. Consider the needs of individuals receiving services from managed care programs in similar-sized states, and the alignment of benefit packages.
 - c. Review populations covered by the program of all-inclusive care for the elderly in other states.
 - d. Consider options for including services under a managed care arrangement.
 - e. Consider developing a proposed plan, cost estimates, and potential timeline for implementing the managed care options identified.
 - f. Consider preparing and distributing a request for information from managed care organizations regarding the managed care options identified.
2. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 33. LEGISLATIVE MANAGEMENT STUDY - BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES. During the 2017-18 interim, the legislative management shall consider studying state and federal laws and

regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs.

1. The study must include a review of the following:
 - a. The state's services and delivery systems, including whether changes are necessary to maintain compliance with state and federal laws and regulations;
 - b. Efforts by other states to comply with the 1999 *Olmstead v. L.C.* case, including the planning and implementation process for any new programs;
 - c. Community- and non-community-based services, including the costs and effectiveness of services;
 - d. Noncompliance with state and federal laws and regulations, including a review of the fees and penalties for noncompliance;
 - e. A comparison of voluntary and involuntary compliance with state and federal laws and regulations, including a review of long-term costs and effectiveness;
 - f. The impact of implementation and expansion of selected programs that were added to address unmet needs, including the impact on costs and effectiveness of new programs;
 - g. Needed changes to address noncompliance and a timeline for completing changes;
 - h. Data on the number of individuals who would be impacted by voluntary compliance efforts, and data on the type of services that may need changing, including housing, peer counseling, outpatient treatment, crisis line access, and transportation services; and
 - i. An evaluation of the funding, mission, and caseload at the life skills and transition center, including the center's transition plan and number of clients eligible for community placement.
2. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement those recommendations, to the sixty-sixth legislative assembly.

SECTION 34. LEGISLATIVE MANAGEMENT STUDY - DEPARTMENT OF HUMAN SERVICES DELIVERY SYSTEM. During the 2017-18 interim, the legislative management shall consider conducting a comprehensive study of the department of human services.

1. The study must include:
 - a. A review of the continuum of services for each population served, the delivery methods for those services, and the efficiency and effectiveness of the services.
 - b. The involvement of federal, state, and local governments and for-profit and nonprofit entities in the provision and funding of services.

- c. An analysis of the funding levels for the programs and services included in the delivery system.
 - d. Consideration of the appropriate role for each of the entities involved in the delivery system.
 - e. The development of a comprehensive master structure for the system.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 35. LEGISLATIVE MANAGEMENT STUDY - NURSING FACILITY RATES. During the 2017-18 interim, the legislative management shall consider studying the nursing facility rate components to determine the adequacy of reimbursement and evaluate the efficiency of nursing facility operations. The study must identify and review potential quality measures relating to nursing facilities and consider the feasibility and desirability of using quality measures as a component of reimbursement. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 36. 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, ~~2015~~2017, and July 31, ~~2017~~2019, 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 [80.47-kilometer] radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or
 - d. The state department of health and the department of human services grant approval of new basic care beds to an entity. The approved entity shall license the beds within forty-eight months from the date of approval.

SECTION 37. 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 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,

~~2015~~2017, and July 31, ~~2017~~2019. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than one time in a twelve-month period.

³ **SECTION 38. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-37. (Effective January 1, 2014, through July 31, ~~2017~~2019) Medicaid expansion - Legislative management report.

1. The department of human services shall expand medical assistance coverage as authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to individuals under sixty-five years of age with income below one hundred thirty-eight percent of the federal poverty level, based on modified adjusted gross income.
2. The department of human services shall inform new enrollees in the medical assistance program that benefits may be reduced or eliminated if federal participation decreases or is eliminated.
3. The department shall implement the expansion by bidding through private carriers or utilizing the health insurance exchange.
4. The contract between the department and the private carrier must:
 - a. Provide a reimbursement methodology for all medications and dispensing fees which identifies the minimum amount paid to pharmacy providers for each medication. The reimbursement methodology, at a minimum, must:
 - (1) Be available on the department's website; and
 - (2) Encompass all types of pharmacy providers regardless of whether the pharmacy benefits are being paid through the private carrier or contractor or subcontractor of the private carrier under this section.
 - b. Provide full transparency of all costs and all rebates in aggregate.
 - c. Allow an individual to obtain medication from a pharmacy that provides mail order service; however, the contract may not require mail order to be the sole method of service and must allow for all contracted pharmacy providers to dispense any and all drugs included in the benefit plan and allowed under the pharmacy provider's license.
 - d. Ensure that pharmacy services obtained in jurisdictions other than this state and its three contiguous states are subject to prior authorization and reporting to the department for eligibility verification.
 - e. Ensure the payments to pharmacy providers do not include a required payback amount to the private carrier or one of the private carrier's

³ Section 50-24.1-37 was repealed by section 40 of House Bill No. 1012, chapter 11.

contractors or subcontractors which is not representative of the amounts allowed under the reimbursement methodology provided in subdivision a.

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5. The contract between the department and the private carrier must provide the department with full access to provider reimbursement rates. The department shall consider provider reimbursement rate information in selecting a private carrier under this section. Before August first of each even-numbered year, the department shall submit a report to the legislative management regarding provider reimbursement rates under the medical assistance expansion program. This report may provide cumulative data and trend data but may not disclose identifiable provider reimbursement rates.
6. Provider reimbursement rate information received by the department under this section and any information provided to the department of human services or any audit firm by a pharmacy benefit manager under this section is confidential under section 44-04-17.1, except the department may use the reimbursement rate information to prepare the report to the legislative management as required under this section.

⁴ **SECTION 39. AMENDMENT.** Subsection 1 of section 54-27-25 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under subsection IX(c)(1) of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Except as provided in subsection 2, moneys received by the state under subsection IX(c)(1) must be deposited in the fund. Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund may be appropriated to the attorney general for the purpose of enforcing the master settlement agreement and any disputes with the agreement. All remaining principal and interest of the fund must be allocated as follows:
 - a. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal ~~ten-fifty-five~~ percent of total annual transfers from the tobacco settlement trust fund of which a minimum of eighty percent must be used for tobacco prevention and control.
 - b. ~~Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty-five percent of total annual transfers from the tobacco settlement trust fund.~~
 - e. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state.

⁴ Section 54-27-25 was also amended by section 13 of Senate Bill No. 2004, chapter 29, and section 2 of Senate Bill No. 2024, chapter 193.

Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.

⁵ **SECTION 40. REPEAL.** Section 50-24.1-37 of the North Dakota Century Code is repealed.

SECTION 41. CONTINGENT EFFECTIVE DATE. Section 40 of this Act becomes effective if the executive director of the department of human services certifies to the secretary of state and the legislative council the federal government ended the medical assistance expansion program.

SECTION 42. EXPIRATION DATE. Section 39 of this Act is effective through June 30, 2019, and after that date is ineffective.

SECTION 43. EMERGENCY. Sections 11, 12, 13, and 22 of this Act are declared to be an emergency measure.

Approved April 28, 2017

Filed May 1, 2017

⁵ Section 50-24.1-37 was amended by section 38 of House Bill No. 1012, chapter 11.

CHAPTER 12**HOUSE BILL NO. 1013**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the state library, the school for the deaf, and the North Dakota vision services - school for the blind; to create and enact a new section to chapter 25-06 and a new section to chapter 25-07 of the North Dakota Century Code, relating to the school for the blind fund and the school for the deaf fund; to repeal section 6-09-45 of the North Dakota Century Code and section 13 of chapter 49 of the 2015 Session Laws, relating to a required transfer from the Bank of North Dakota and a contingent appropriation; to provide exemptions; to provide for a transfer; to provide a statement of legislative intent; 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 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, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$18,280,006	(\$840,830)	\$17,439,176
Operating expenses	30,517,072	(352,067)	30,165,005
Integrated formula payments	1,916,640,000	18,564,163	1,935,204,163
Grants - special education	17,300,000	2,000,000	19,300,000
Grants - transportation	57,000,000	(1,600,000)	55,400,000
Grants - other grants	267,807,227	(13,424,522)	254,382,705
Grants - program grants	0	6,210,000	6,210,000
Grants - passthrough grants	0	2,898,000	2,898,000
PowerSchool	6,000,000	(500,000)	5,500,000
Transportation efficiency	30,000	0	30,000
National board certification	<u>120,000</u>	<u>0</u>	<u>120,000</u>
Total all funds	\$2,313,694,305	\$12,954,744	\$2,326,649,049
Less estimated income	<u>624,685,766</u>	<u>266,361,299</u>	<u>891,047,065</u>
Total general fund	\$1,689,008,539	(\$253,406,555)	\$1,435,601,984
Full-time equivalent positions	99.75	(8.00)	91.75

Subdivision 2.

STATE LIBRARY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,019,839	\$132,919	\$4,152,758
Operating expenses	1,713,393	(109,318)	1,604,075
Grants	2,785,500	(676,472)	2,109,028
Total all funds	\$8,518,732	(\$652,871)	\$7,865,861
Less estimated income	2,438,751	(191,191)	2,247,560
Total general fund	\$6,079,981	(\$461,680)	\$5,618,301
Full-time equivalent positions	29.75	(1.00)	28.75

Subdivision 3.

SCHOOL FOR THE DEAF

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,291,854	\$296,895	\$7,588,749
Operating expenses	1,925,163	101,380	2,026,543
Capital assets	227,174	664,504	891,678
Grants	186,900	(6,900)	180,000
Total all funds	\$9,631,091	\$1,055,879	\$10,686,970
Less estimated income	1,089,210	2,109,234	3,198,444
Total general fund	\$8,541,881	(\$1,053,355)	\$7,488,526
Full-time equivalent positions	45.61	(0.00)	45.61

Subdivision 4.

NORTH DAKOTA VISION SERVICES - SCHOOL FOR THE BLIND

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,554,349	\$106,646	\$4,660,995
Operating expenses	739,169	34,037	773,206
Capital assets	24,454	150,238	174,692
Total all funds	\$5,317,972	\$290,921	\$5,608,893
Less estimated income	569,325	645,422	1,214,747
Total general fund	\$4,748,647	(\$354,501)	\$4,394,146
Full-time equivalent positions	30.00	(1.50)	28.50

Subdivision 5.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$1,708,379,048	(\$255,276,091)	\$1,453,102,957
Grand total special funds	628,783,052	268,924,764	897,707,816
Grand total all funds	\$2,337,162,100	\$13,648,673	\$2,350,810,773

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in subdivisions 1, 2, 3, and 4 of section 1 of this Act include funding from the general fund and special funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month. Total funding provided is as follows:

	<u>General fund</u>	<u>Special funds</u>	<u>Total</u>
Department of public instruction	\$65,196	\$181,686	\$246,882
State library	66,885	10,100	76,985

School for the deaf	117,494	3,584	121,078
North Dakota vision services - school for the blind	<u>82,223</u>	<u>70</u>	<u>82,293</u>
Total	\$331,798	\$195,440	\$527,238

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 one-time funding items included in the appropriations in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Department of public instruction		
Cardiopulmonary resuscitation training grants	\$165,500	\$0
Free or reduced meals information technology	30,000	0
Rapid enrollment grants	12,504,530	0
Regional education association merger grants	0	100,000
North Dakota governor's school science, technology, engineering, and mathematics programs	0	220,000
Integrated formula payments	0	<u>185,000,000</u>
Total department of public instruction - all funds	\$12,700,030	\$185,320,000
Total department of public instruction - estimated income	<u>0</u>	<u>185,320,000</u>
Total department of public instruction - general fund	\$12,700,030	\$0
State library		
Library repair grants	<u>\$250,000</u>	<u>\$0</u>
Total state library - general fund	\$250,000	\$0
School for the deaf		
Extraordinary repairs	\$600,000	\$675,000
Equipment	0	28,000
Video equipment and software	<u>0</u>	<u>30,000</u>
Total school for the deaf - estimated income	\$600,000	\$733,000
North Dakota vision services - school for the blind		
Equipment	\$21,000	\$0
Special assessments payoff	19,000	10,000
Server and access points	16,000	0
Heating and cooling upgrade	0	35,500
Replace water line	0	60,000
Carpet and reception upgrade	<u>0</u>	<u>30,000</u>
Total school for the blind - estimated income	\$56,000	\$135,500
Grand total - all funds	\$13,606,030	\$186,188,500
Grand total - estimated income	<u>656,000</u>	<u>186,188,500</u>
Grand total - general fund	\$12,950,030	\$0

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of public instruction, school for the deaf, and North Dakota vision services - school for the blind shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. TRANSFER - PUBLIC INSTRUCTION FUND TO STATE TUITION FUND. During the biennium beginning July 1, 2017, and ending June 30, 2019, the office of management and budget shall transfer \$4,282,905 from the public instruction fund to the state tuition fund for the purpose of providing funding for integrated formula payments.

SECTION 5. APPROPRIATION - TUITION APPORTIONMENT. The sum of \$305,546,905, included in the integrated formula payments line item in subdivision 1 of section 1 of this Act, is from the state tuition fund in the state treasury. Any additional amount in the state tuition fund that becomes available for distribution to public schools is appropriated to the department of public instruction for that purpose for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. ESTIMATED INCOME - FOUNDATION AID STABILIZATION FUND. The estimated income line item in subdivision 1 of section 1 of this Act includes \$295,100,000 from the foundation aid stabilization fund. Of this amount, \$100,000 is for regional education association merger grants and \$295,000,000 is for integrated formula payments. Of the total provided, \$185,100,000 is considered to be one-time funding.

SECTION 7. ESTIMATED INCOME - ONE-TIME FUNDING - STUDENT LOAN TRUST FUND. The estimated income line item in subdivision 1 of section 1 of this Act includes \$220,000 from the student loan trust fund for the purpose of providing a one-time grant for North Dakota governor's school science, technology, engineering, and mathematics programs.

SECTION 8. FUNDING TRANSFER - EXEMPTION - AUTHORIZATION. Notwithstanding section 54-16-04, the superintendent of public instruction may transfer up to \$1,200,000 from the integrated formula payments line item to the grants - special education line item and up to \$108,000 from the integrated formula payments line item to the grants - transportation line item, for the biennium beginning July 1, 2015, and ending June 30, 2017. The superintendent of public instruction shall notify the office of management and budget of any transfer made pursuant to this section.

SECTION 9. EXEMPTION - ADVANCED PLACEMENT PROGRAM FUNDING. The unexpended amount remaining from the transfer of \$1,252,627 from the 2013-15 biennium, as authorized in section 32 of chapter 137 of the 2015 Session Laws to enhance the delivery of and the participation of students and teachers in advanced placement courses during the 2015-17 biennium, is not subject to the provisions of section 54-44.1-11 at the end of the 2015-17 biennium and may be continued into the 2017-19 biennium for the purpose of program grants, including leveraging the senior year, leadership program, continuing education grants, preschool continuing education grants, curriculum alignment grants, and teacher and principal evaluation system grants.

SECTION 10. INTEGRATED FORMULA PAYMENTS AND SPECIAL EDUCATION CONTRACTS EXPENDITURE AUTHORITY. The superintendent of public instruction may expend funds included in the integrated formula payments and grants - special education line items in subdivision 1 of section 1 of this Act in payment of grants for educational services that were due in the 2015-17 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2017. To be reimbursed under this section, claims must be properly supported and filed with the superintendent of public instruction by June 30, 2018.

SECTION 11. GRANTS - SPECIAL EDUCATION DEFICIENCY AUTHORIZATION. If funds provided to the superintendent of public instruction in subdivision 1 of section 1 of this Act for grants - special education, for the biennium beginning July 1, 2017, and ending June 30, 2019, are not sufficient to meet special education contract obligations, the superintendent of public instruction shall request supplemental funding from the sixty-sixth legislative assembly.

SECTION 12. GIFTED AND TALENTED PROGRAM - MEDICAID MATCHING FUNDING - DISTRIBUTION.

1. The sum of \$800,000, included in the integrated formula payments line item in subdivision 1 of section 1 of this Act, must be distributed to reimburse school districts or special education units for gifted and talented programs upon the submission of an application that is approved in accordance with guidelines adopted by the superintendent of public instruction. The superintendent of public instruction shall encourage cooperative efforts for gifted and talented programs among school districts and special education units.
2. State school aid payments for special education must be reduced by the amount of matching funds required to be paid by school districts or special education units for students participating in the medicaid program. Special education funds equal to the amount of the matching funds required to be paid by the school district or special education unit must be paid by the superintendent of public instruction to the department of human services on behalf of the school district or unit.

SECTION 13. TRANSPORTATION GRANTS - DISTRIBUTION.

1. During each year of the 2017-19 biennium, the superintendent of public instruction shall calculate the payment to which each school district is entitled based on the state transportation formula as it existed on June 30, 2001, except that the superintendent shall provide reimbursement at the rate of:
 - a. One dollar and eleven cents per mile for school buses having a capacity of ten or more passengers.
 - b. Fifty-two cents per mile for vehicles having a capacity of nine or fewer passengers.
 - c. Fifty cents per mile, provided:
 - (1) The student being transported is a student with a disability, as defined in chapter 15.1-32;
 - (2) The student's individualized education program plan requires that the student attend a public or a nonpublic school located outside the student's school district of residence;
 - (3) The student is transported by an adult member of the student's family;
 - (4) The student is transported in a vehicle furnished by the student's parents;
 - (5) The student's transportation is paid for by the student's parents; and
 - (6) The reimbursement does not exceed two round trips daily between the student's home and school.
 - d. Fifty cents per mile, one way, provided:
 - (1) The student being transported resides more than two miles from the public school that the student attends;

- (2) The student is transported by an adult member of the student's family;
 - (3) The student is transported in a vehicle furnished by the student's parents; and
 - (4) The student's transportation is paid for by the student's parents.
- e. Thirty cents per student for each one-way trip.
2. The superintendent of public instruction shall use the latest available student enrollment count in each school district in applying the provisions of subsection 1.
 3. This section does not authorize the reimbursement of any costs incurred in providing transportation for student attendance at extracurricular activities or events.

SECTION 14. PROGRAM GRANT POOL - CONTINUING EDUCATION GRANTS - FUNDING - DISTRIBUTION. The line item entitled grants - program grants included in subdivision 1 of section 1 of this Act includes \$1,530,000 for a program grant pool. The superintendent of public instruction shall use the funding provided for various grant programs, including up to \$75,000, or so much of the sum as may be necessary, for continuing education grants, for the biennium beginning July 1, 2017, and ending June 30, 2019.

1. The superintendent of public instruction shall award continuing education 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 15. REGIONAL EDUCATION ASSOCIATION MERGER GRANTS - ONE-TIME FUNDING - DISTRIBUTION. The grants - other grants line item included in subdivision 1 of section 1 of this Act includes \$100,000 from the foundation aid stabilization fund for the purpose of providing a one-time \$25,000 grant to each regional education association that merges with another regional education association to form a single entity with a single governing board during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 16. REGIONAL EDUCATION ASSOCIATION GRANTS - DISTRIBUTION. The integrated formula payments line item included in subdivision 1 of section 1 of this Act includes \$500,000 from the general fund for the purpose of providing annual grants to regional education associations for the biennium beginning July 1, 2017, and ending June 30, 2019. An annual grant of \$31,250 is provided to each regional education association that exists as of July 1, 2017. Regional education associations that merge during the 2017-19 biennium are entitled to the annual grants that would have been paid to each of the member associations.

SECTION 17. EXEMPTION - INDIRECT COST ALLOCATION. Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account.

SECTION 18. STATE AID TO PUBLIC LIBRARIES. The line item entitled grants in subdivision 2 of section 1 of this Act includes \$1,737,528 for aid to public libraries, of which no more than one-half may be expended during the fiscal year ending June 30, 2018.

SECTION 19. FEES DEPOSITED IN NORTH DAKOTA 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 20. 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, 2017, and ending June 30, 2019. Moneys appropriated for this program are not subject to section 54-44.1-11. Funds must be distributed pursuant to the provisions of this section:

1. The school for the deaf shall develop a formula to determine the grant amount for which an institution is eligible. The formula must be based on an uniform hourly reimbursement.
2. To obtain a grant under this section, an institution shall submit to the school for the deaf, at the time and in the manner directed by the school, invoices showing the amount expended for interpreters and real-time captioning for students who are deaf or hard of hearing.
3. The school for the deaf may not distribute more than fifty percent of the amount appropriated during the first year of the biennium.
4. If any grant moneys remain undistributed at the end of the biennium, the school for the deaf shall provide additional prorated grants to institutions that incurred, during the biennium, hourly expenses in excess of the formula reimbursement level.
5. At the request of an institution under the control of the state board of higher education, the school for the deaf shall consult with the institution and provide advice regarding the provision of services most appropriate to meet a student's needs.

SECTION 21. PASSTHROUGH GRANTS - APPLICATION - DISTRIBUTION - REPORTING. The line item entitled grants - passthrough grants included in subdivision 1 of section 1 of this Act includes \$2,100,000 for passthrough grants for writing projects, an entrepreneur program, and a mentoring program. The superintendent of public instruction shall determine the manner in which each passthrough grant is distributed. Grantees, as a condition of receiving the grant, must establish performance measures to be reviewed by the superintendent of public instruction. Grantees shall report to the superintendent of public instruction regarding performance based on the measures before October 1, 2018. The superintendent of public instruction shall report to the appropriations committees of the sixty-sixth legislative assembly regarding funds granted, performance measures established for each grantee, and whether grantees met performance expectations.

SECTION 22. LEGISLATIVE INTENT - TEACHER AND ADMINISTRATOR MENTORING. It is the intent of the sixty-fifth legislative assembly that school districts, in addition to mentoring services provided by the state, use federal title II funding for teacher and administrator mentoring.

SECTION 23. LEGISLATIVE MANAGEMENT STUDY - EDUCATIONAL PROGRAMS. During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of combining services for any or all English language learner programs, distance learning programs, regional education agencies, teacher center networks, adult learning centers, career and technical education programs, education technology services, continuing education for counselors, educational leadership, and the teacher mentoring program. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 24. A new section to chapter 25-06 of the North Dakota Century Code is created and enacted as follows:

School for the blind fund.

The school for the blind fund is a special fund in the state treasury. All moneys received pursuant to section 2 of article IX of the Constitution of North Dakota, revenues received from services and leases, and contributions must be deposited in the fund. Moneys in the fund are to be used pursuant to legislative appropriation for the provision of services under this chapter.

SECTION 25. A new section to chapter 25-07 of the North Dakota Century Code is created and enacted as follows:

School for the deaf fund.

The school for the deaf fund is a special fund in the state treasury. All moneys received pursuant to section 2 of article IX of the Constitution of North Dakota and all revenues received from the lease of buildings and the provision of meals and services, including interpreter services, must be deposited in the fund. Moneys in the fund are to be used pursuant to legislative appropriation for provision of services under this chapter.

SECTION 26. REPEAL. Section 6-09-45 of the North Dakota Century Code is repealed.

SECTION 27. REPEAL. Section 13 of chapter 49 of the 2015 Session Laws is repealed.

SECTION 28. EMERGENCY. Sections 8 and 27 of this Act are declared to be emergency measures.

Approved April 25, 2017

Filed April 25, 2017

CHAPTER 13

HOUSE BILL NO. 1014

(Appropriations Committee)

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 the committee on protection and advocacy, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Protection and advocacy operations	\$6,453,779	(\$6,179)	\$6,447,600
Total all funds	\$6,453,779	(\$6,179)	\$6,447,600
Less estimated income	3,432,853	55,748	3,488,601
Total general fund	\$3,020,926	(\$61,927)	\$2,958,999
Full-time equivalent positions	27.50	0.00	27.50

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$74,334, of which \$35,891 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 14

HOUSE BILL NO. 1015

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an appropriation for defraying the expenses of the state auditor; to provide an appropriation to North Dakota state university; to provide an appropriation to Dickinson state university; to provide an appropriation to the department of human services; to provide for transfers; to identify grant funding; to create and enact a new subsection to the new section to chapter 40-05 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2166, as approved by the sixty-fifth legislative assembly, relating to property tax incentives granted by a city; to amend and reenact sections 5-02-01.1 and 6-09-15.1, subsection 8 of section 15-10-38 as amended by section 2 of Senate Bill No. 2037, as approved by the sixty-fifth legislative assembly, section 43-26.1-05.1 as created by section 2 of Senate Bill No. 2131, as approved by the sixty-fifth legislative assembly, subsection 7 of section 47-02-27.4 as created by section 1 of House Bill No. 1228, as approved by the sixty-fifth legislative assembly, and sections 54-06-04.3 and 57-20-04 of the North Dakota Century Code and subsection 3 of section 8 of House Bill No. 1024, section 21 of Senate Bill No. 2013, and section 23 of Senate Bill No. 2013, as approved by the sixty-fifth legislative assembly, relating to alcohol special event permits, temporary loans to the general fund, the teacher loan forgiveness program, criminal history record checks, exclusions from the statutory rule against perpetuities, state agency publication fees, property tax increase reports, cost reimbursement land sales, an oil and gas valuation study, and effective dates; to repeal section 57-20-05 of the North Dakota Century Code, relating to tax certifications; to suspend section 54-35-23 of the North Dakota Century Code, relating to the tribal and state relations committee; to provide for the administration of the tobacco prevention and control trust fund; to provide exemptions; to provide statements of legislative intent; to provide for legislative management studies; to provide for a legislative management tribal taxation issues committee; to provide for a report to the legislative management; to provide for a budget section report; 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 office of management and budget for the purpose of defraying the expenses of the office of management and budget, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$19,798,254	\$1,798,578	\$21,596,832
Operating expenses	13,855,260	196,178	14,051,438

Emergency commission contingency fund	500,000	100,000	600,000
Capital assets	200,000	1,573,477	1,773,477
Grants	555,000	(1,000)	554,000
Guardianship grants	1,328,600	0	1,328,600
Prairie public broadcasting	1,600,000	(400,000)	1,200,000
State student internship program	200,000	(200,000)	0
Cybersecurity remediation pool	0	1,000,000	1,000,000
Total all funds	\$38,037,114	\$4,067,233	\$42,104,347
Less estimated income	7,210,390	4,023,697	11,234,087
Total general fund	\$30,826,724	\$43,536	\$30,870,260
Full-time equivalent positions	122.50	(5.50)	117.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$315,900, of which \$259,704 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Student internship	\$50,000	\$0
Facilities projects	205,000	0
Signage on the capitol grounds	1,400,000	0
West parking lot repair	50,000	0
Affordable Care Act health insurance pool	3,350,000	0
Facilities projects	1,475,303	0
Legislative electrical	310,000	0
Energy pool	7,965,000	0
Environmental impact committee - HB 1432	1,500,000	0
Surplus property building	0	800,000
Cybersecurity remediation pool	0	1,000,000
Theodore Roosevelt center grant	0	500,000
Total all funds	\$16,305,303	\$2,300,000
Less estimated income	9,775,000	1,800,000
Total general fund	\$6,530,303	\$500,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The office of management and budget shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. APPROPRIATION - STATE AUDITOR. 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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,655,646	\$111,666	\$11,767,312
Operating expenses	1,176,806	(34,023)	1,142,783
North Dakota university system information technology security audits	200,000	(200,000)	0
Information technology consultants	<u>250,000</u>	<u>(250,000)</u>	<u>0</u>
Total all funds	\$13,282,452	(\$372,357)	\$12,910,095
Less estimated income	<u>3,505,870</u>	<u>(94,383)</u>	<u>3,411,487</u>
Total general fund	\$9,776,582	(\$277,974)	\$9,498,608
Full-time equivalent positions	59.80	(3.80)	56.00

SECTION 5. HEALTH INSURANCE INCREASE - STATE AUDITOR. The salaries and wages line item in section 4 of this Act includes the sum of \$140,696, of which \$104,201 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 6. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - NORTH DAKOTA STATE UNIVERSITY - MINARD HALL. There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$1,634,854, or so much of the sum as may be necessary, to North Dakota state university for the purpose of paying unreimbursed costs related to the collapse of Minard hall, for the period beginning with the effective date of this section and ending June 30, 2017.

SECTION 7. APPROPRIATION - DICKINSON STATE UNIVERSITY. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$875,000, or so much of the sum as may be necessary, to Dickinson state university for the purpose of institution operations, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item.

SECTION 8. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES. There is appropriated out of special funds derived from federal funds or other income, not otherwise appropriated, the sum of \$1,558,318, or so much of the sum as may be necessary, to the department of human services for the purpose of funding medical assistance grants, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 9. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND. The office of management and budget shall transfer the sum of \$248,000,000 from the strategic investment and improvements fund to the general fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 10. TRANSFER - TAX RELIEF FUND TO GENERAL FUND. The office of management and budget shall transfer the sum of \$183,000,000 from the tax relief fund to the general fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. LEGACY FUND EARNINGS ESTIMATE - 2017-19 BIENNIUM. For legislative council budget status reporting purposes, the sixty-fifth legislative assembly estimates \$200,000,000 of earnings will be transferred from the legacy fund to the general fund at the end of the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 12. ESTIMATE OF 2015-17 BIENNIUM UNEXPENDED GENERAL FUND APPROPRIATIONS. For legislative council budget status reporting purposes, as an update to the March 2017 legislative revenue forecast, the sixty-fifth legislative assembly estimates \$52,000,000 of unexpended general fund appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017.

SECTION 13. TRANSFER - CYBERSECURITY REMEDIATION POOL. The office of management and budget may transfer appropriation authority from the cybersecurity remediation pool line item in section 1 of this Act to each eligible agency during the biennium beginning July 1, 2017, and ending June 30, 2019. Transfers may be made for the purpose of providing remediation services resulting from an information technology security breach. The office of management and budget shall notify the legislative council of any transfers made from the cybersecurity remediation pool.

SECTION 14. OIL AND GAS IMPACT GRANT FUND - DEVELOPMENTAL DISABILITIES SERVICES PROVIDER GRANT. Notwithstanding chapter 57-62 or any of the designations in section 5 of chapter 463 of the 2015 Session Laws, the board of university and school lands shall award a grant of up to \$261,000, from any money deposited in the oil and gas impact grant fund for taxable events through June 30, 2017, to a community-based provider serving individuals with developmental disabilities, during the period beginning with the effective date of this section, and ending June 30, 2019. A provider is eligible to receive grant funding only if the provider is impacted by oil and gas development activity and is operating intermediate care facilities with locations in both the northwest and north central human service regions of the state. The recipient may use the grant proceeds only to provide settlement for any amounts owed to the department of human services or a bank. The department of human services may use a portion of the settlement payments received from the provider for repayments to the federal government. Before any grant funding may be paid to the provider, the board of university and school lands must receive certification of the following:

1. That the department of human services has reviewed actual cost reports and estimated audit settlement amounts.
2. That the provider has exhausted insurance recovery options and has restructured any outstanding debt.
3. The amounts owed to the department of human services and a bank.

SECTION 15. TOBACCO PREVENTION AND CONTROL TRUST FUND - ADMINISTRATION. The office of management and budget shall administer the tobacco prevention and control trust fund established in section 54-27-25 and transfer funds as necessary in accordance with legislative authorizations or appropriations from the fund for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 16. EXEMPTION - FISCAL MANAGEMENT. The amount appropriated for the fiscal management division, as contained in section 1 of chapter 49 of the 2015 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for continued development and operating costs of the statewide systems, including accounting, management, and payroll, during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 17. EXEMPTION - CAPITOL BUILDING FUND. The amount of \$1,400,000 appropriated from the capitol building fund for capitol building entrance and signage projects, as contained in section 1 of chapter 49 of the 2015 Session

Laws, is not subject to the provisions of section 54-44.1-11, and any unexpended funds from this appropriation are available during the biennium beginning July 1, 2017, and ending June 30, 2019. Of the \$1,400,000, up to \$1,000,000 is available for extraordinary repairs, and the remaining amount is available for capitol building entrance and signage projects.

SECTION 18. INTENT. Within the authority included in section 1 of this Act are the following grants and special items:

Boys and girls club work	\$53,000
Unemployment insurance	\$2,000,000
Capitol grounds planning commission	\$25,000
Statewide memberships and related expenses	\$531,450

SECTION 19. AMENDMENT. Section 5-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. Event permit authorized - Penalty.

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such tax imposed by the city or a licensee in a county, a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:
 - a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine; and
 - c. ~~Subject to section 5-02-06, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and~~
 - d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

SECTION 20. AMENDMENT. Section 6-09-15.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09-15.1. Loans to general fund authorized - Continuing appropriation - Report.

The state treasurer and the director of the office of management and budget may, when the balance in the state general fund is insufficient to meet legislative appropriations, ~~execute and issue on behalf of the state evidences of indebtedness on the state general fund which borrow from the Bank of North Dakota in an amount that at no time exceedexceeds the total principal amount of fifty million dollars with principal maturity of not more than twelve monthsnot to extend beyond the biennium in which the borrowing occurs.~~ As a condition precedent to the issuance ~~and sale of the evidences of indebtednessloan,~~ the state treasurer must request and obtain a statement from the director of the office of management and budget and state tax commissioner certifying that anticipated general fund revenues for the balance of the ~~fiscal yearbiennium~~ in which the ~~evidences of indebtedness are to be issuedloan is taken~~ will exceed the principal amount and interest on the ~~evidences of indebtedness to be issuedloan.~~ The state industrial commission may in turn direct the Bank of North Dakota to make loans to the state general fund by the ~~purchase of the evidences of indebtedness~~ at such rates of interest as the industrial commission may prescribe. ~~After evidences of indebtedness have been issued and sold pursuant to this section,~~ ~~the~~The state treasurer and the director of the office of management and budget shall establish a ~~fund~~repayment plan for the repayment of the principal upon maturity and the interest when due. ~~The state treasurer shall place all available general fund revenues into this fund until the fund contains a sufficient balance for the repayment of the principal at maturity and interest when due, which moneys are hereby appropriated for this purpose.~~ The office of management and budget shall report to the budget section of the legislative management regarding any loans obtained pursuant to this section.

⁶ **SECTION 21. AMENDMENT.** Subsection 8 of section 15-10-38 of the North Dakota Century Code as amended by section 2 of Senate Bill No. 2037, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

8. Upon notification the individual has completed a full year of teaching in a school district ~~or, state-supported school, or nonpublic school~~ in this state at a grade level or in a content area and in a geographical location identified by the superintendent of public instruction as one in which a teacher shortage or critical need exists, the board shall distribute funds directly to the lending institution of the individual to repay outstanding loan principal balances on behalf of eligible applicants. The board shall terminate loan forgiveness payments to eligible individuals when the loan principal balance of the eligible individual is paid in full.

⁷ **SECTION 22.** A new subsection to the new section to chapter 40-05 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2166, as approved by the sixty-fifth legislative assembly, is created and enacted as follows:

Property subject to a development agreement entered pursuant to section 40-58-20.1 before August 1, 2017, and all amendments to the development agreement, is not subject to the requirements under this section.

⁶ Section 15-10-38 was also amended by section 2 of Senate Bill No. 2037, chapter 125.

⁷ Section 40-05-24 was created by section 1 of Senate Bill No. 2166, chapter 277.

⁸ **SECTION 23. AMENDMENT.** Section 43-26.1-05.1 of the North Dakota Century Code as created by section 2 of Senate Bill No. 2131, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

43-26.1-05.1. Use of criminal history record checks.

The board may require a physical therapy or physical therapy assistant applicant, or a licensee under investigation, to submit to a statewide and nationwide criminal history record check, including a fingerprint-based criminal history background check. The criminal history record check must be conducted in the manner provided by section 12-60-24. The criminal history record check is an exempt record but may not be disseminated by the board to the physical therapy compact commission or a similar entity. All costs associated with a criminal history record check performed under this section are the responsibility of the applicant or licensee.

⁹ **SECTION 24. AMENDMENT.** Subsection 7 of section 47-02-27.4 of the North Dakota Century Code as created by section 1 of House Bill No. 1228, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

7. Except to the extent otherwise provided in the governing instrument of a business trust, a business trust has perpetual existence, and a business trust may not be terminated or revoked by a beneficial owner or other person except in accordance with the terms of its governing instrument. A business trust, whether domestic or foreign, except for a real estate investment trust, may not own any interest in real property within this state. As used in this subsection "real estate investment trust" means a trust qualifying as a real estate investment trust under section 856 et seq., of the United States Internal Revenue Code of 1986 [26 U.S.C. 856 et seq.], or a trust qualifying as a real estate mortgage investment conduit under section 860D of the United States Internal Revenue Code of 1986 [26 U.S.C. 860D].

SECTION 25. AMENDMENT. Section 54-06-04.3 of the North Dakota Century Code is amended and reenacted as follows:

54-06-04.3. Joint publication and distribution of information by state agencies - Fees.

Any state agency may cooperate with any other state agency to jointly publish and distribute information and may arrange to have the joint publication or distribution, or both, coordinated by a private entity. Any state agency may provide information it has collected or developed, including mailing lists, to each other or to any private entity for the purpose of distributing jointly or individually issued publications or other information. If a state agency publication is available on the agency's website or otherwise available in an electronic format and a person requests a paper copy of the publication, the state agency may charge a reasonable fee for providing the paper copy and for mailing the paper copy of the publication.

SECTION 26. AMENDMENT. Section 57-20-04 of the North Dakota Century Code is amended and reenacted as follows:

⁸ Section 43-26.1-05.1 was created by section 2 of Senate Bill No. 2131, chapter 96.

⁹ Section 47-02-27.4 was also amended by section 1 of House Bill No. 1228, chapter 416.

57-20-04. Abstract of tax list to be sent to tax commissioner - Reports.

1. The county auditor, on or before December thirty-first following the levy of the taxes, shall makeprepare and transmit to the state tax commissioner, in such form as the tax commissioner may prescribe, a complete abstract of the tax list of the auditor's county.
2. In addition to the tax list required in subsection 1, the county auditor, on or before December thirty-first following the levy of the taxes, shall prepare and transmit to the tax commissioner a report providing each taxing district's property valuation and property tax levy and any other information the tax commissioner deems necessary to prepare the report required in subsection 3. For taxing districts with property in more than one county, information must be collected and transmitted by the county auditor of the county in which the main office of that taxing district is located.
3. The tax commissioner shall compile information received from the county auditors in subsection 2 and prepare a statewide report of property tax increase. The report must include the annual increase in property taxes levied by each taxing district of the state after adjusting for property that was not taxable in the preceding year and property that is no longer taxable which was taxable in the preceding year. The report must be provided to the legislative management by April first of each year.
4. The tax commissioner shall prescribe the form and manner of providing the reports and certifications required under this section.
5. On or before December 31, 2017, the county auditor shall provide a report to the tax commissioner providing the information identified in subsection 2 for the 2015 and 2016 tax years.

SECTION 27. AMENDMENT. Subsection 3 of section 8 of House Bill No. 1024, as approved by the sixty-fifth legislative assembly, is amended as follows:

3. If the department of emergency services or the governor receive land or other noncash assets as reimbursement, the department of emergency services or the governor shall request authorization from the sixty-sixth legislative assembly to convey the land or noncash assets and use any proceeds for repayment of any remaining outstanding loans. Notwithstanding section 38-09-01 or any other provision of law, the state may not reserve any of the oil, natural gas, or minerals that may be found on or underlying land conveyed under this section.

SECTION 28. AMENDMENT. Section 21 of Senate Bill No. 2013, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

SECTION 21. STUDY OF OIL AND GAS VALUATION - REPORT TO ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE.

1. During the 2017 18 interim, the tax department, in consultation with the board of university and school lands, the industrial commission, and other state agencies as necessary, shall studyconsider studying the valuation of oil and gas as used to determine mineral royalty payments and tax liability. The study must include consideration of the following:

- a. The methods used to calculate the value of oil and gas, including changes in custody, the basis for the value, any deductions or incentives applied to the value, and the point at which the value is determined.
 - b. The impact of state and federal regulations, including gas capture requirements.
 - c. ~~The market competition for gas processing, including the possibility of rate setting by the public service commission.~~
 - d. The reporting of any deductions or incentives applied to the value as included on mineral royalty statements and tax reporting documents.
2. The tax department shall report to the energy development and transmission committee by September 30, 2018, regarding the results and recommendations of the study.

SECTION 29. AMENDMENT. Section 23 of Senate Bill No. 2013, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

SECTION 23. EFFECTIVE DATE. Sections 15 and 16 of this Act are effective for taxable events occurring after June 30, 2017. Section 19 of this Act becomes effective September 1, 2017. ~~House Bill No. 1300, as approved by the sixty-fifth legislative assembly, becomes effective January 1, 2018.~~

SECTION 30. REPEAL. Section 57-20-05 of the North Dakota Century Code is repealed.

SECTION 31. SUSPENSION. Section 54-35-23 of the North Dakota Century Code is suspended.

SECTION 32. LEGISLATIVE INTENT - COST REIMBURSEMENT - LOAN REPAYMENTS. It is the intent of the sixty-fifth legislative assembly that the state explore all options for permanent disposition of land and noncash assets acquired under section 8 of House Bill No. 1024, as approved by the sixty-fifth legislative assembly, as amended by section 27 of this Act. Options to be explored include conveyance or transfer to the parks and recreation department, game and fish department, and private parties.

SECTION 33. TRIBAL TAXATION ISSUES - LEGISLATIVE MANAGEMENT COMMITTEE.

1. During the 2017-18 interim, the tribal taxation issues committee is created and is composed of ten members as follows:
 - a. The governor;
 - b. The lieutenant governor;
 - c. The tax commissioner;
 - d. The executive director of the Indian affairs commission;
 - e. The majority leader of the house of representatives and the majority leader of the senate;

- f. The minority leader of the house of representatives and the minority leader of the senate; and
 - g. The chairmen of the finance and taxation standing committees of the house of representatives and the senate.
2. The nonlegislative members shall serve as nonvoting members of the committee.
3. The legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedures governing the operation of other legislative management interim committees.
4. The committee shall study tribal taxation issues, including the tax collection agreements that exist between the tribes and the state, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, and the procedure for withdrawal from an agreement and how to handle disputed funds.
5. The committee may study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.
6. The chairman of the committee shall invite tribal chairmen to each committee meeting.
7. At the conclusion of its meetings, the committee shall report on its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative management.

SECTION 34. LEGISLATIVE MANAGEMENT STUDY - WIND ENERGY TAXATION AND REVENUE DISTRIBUTION. During the 2017-18 interim, the legislative management shall consider studying the taxation of wind energy and the distribution of tax collections related to wind energy. The study must include consideration of the various methods of taxing wind energy, including production taxes, the parity of wind energy taxation in comparison to the taxation of other energy sources, and the current and historical distribution formulas related to wind energy taxes; the appropriate level of distributions to the taxing districts and the state; the estimated fiscal impact of any proposed changes to the distributions; and other local revenue sources, including local tax revenue and state funding provided to the local taxing districts. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 35. LEGISLATIVE MANAGEMENT STUDY - REVENUE VOLATILITY. During the 2017-18 interim, the legislative management shall consider studying the volatility of state revenue sources. The study must include the volatility of the tax base and revenue sources, including ongoing expenditures. The study also must include consideration of the volatility and sustainability of elementary and secondary education funding, including the general fund, common schools trust fund, and foundation aid stabilization fund. The study must include an assessment of the ending fund balances in the general fund, budget stabilization fund, and foundation aid

stabilization fund, the adequacy of the foundation aid stabilization fund relative to revenue sources, and an analysis of the other trust funds. The study must include historical revenue for all years for which quality data are available. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 36. LEGISLATIVE MANAGEMENT STUDY - IMPACT OF BUDGET REDUCTIONS ON HIGHER EDUCATION. During the 2017-18 interim, the legislative management shall consider studying the impacts of the 2015-17 budget allotments and the 2017-19 budget on research infrastructure at the institutions under the control of the state board of higher education, including:

1. The ability to recruit and retain research faculty graduate students and research assistants since January 1, 2016, and the resultant effect on courses available to students, professional preparation, and timely graduation;
2. Unused research equipment, research space not utilized to capacity, the associated costs to acquire the equipment and space, and the original funding sources for the equipment and space;
3. Grant dollars not applied for or acquired due to loss in capacity of grant writing, research personnel, or infrastructure;
4. The number of faculty and researchers who have left institutions under the control of the state board of higher education since January 1, 2016, their faculty rank, and the dollar amount of grants the faculty and researchers have taken with them;
5. Undergraduate research opportunities lost due to faculty attrition or increased faculty workloads;
6. Change in research output including publications, presentations, intellectual property, and other creative work used in national rankings' calculations; and
7. Preparation of undergraduate and graduate students on technical equipment and program certification by national and international professional bodies.

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

SECTION 37. EFFECTIVE DATE. Section 22 of this Act is effective for property tax incentives approved after July 31, 2017.

SECTION 38. EXPIRATION DATE. Section 31 of this Act is effective through July 31, 2019, and after that date is ineffective.

SECTION 39. EMERGENCY. Sections 6, 14, 19, 27, and 32 of this Act are declared to be an emergency measure.

Approved May 2, 2017

Filed May 3, 2017

CHAPTER 15

HOUSE BILL NO. 1016

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the adjutant general; to provide a transfer; and to provide exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the office of the adjutant general for the purpose of defraying the expenses of the office of the adjutant general, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

NATIONAL GUARD

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,640,086	\$26,439	\$6,666,525
Operating expenses	3,685,547	(159,613)	3,525,934
Capital assets	249,046	32,975,000	33,224,046
Grants	509,514	(190,961)	318,553
Civil air patrol	311,773	(12,193)	299,580
Tuition, recruiting, and retention	2,517,500	100,000	2,617,500
Air guard contract	8,054,554	44,028	8,098,582
Army guard contract	59,870,605	(2,152,661)	57,717,944
Veterans' cemetery	811,486	69,798	881,284
Reintegration program	1,903,743	(642,359)	1,261,384
Total all funds	\$84,553,854	\$30,057,478	\$114,611,332
Less estimated income	66,864,852	31,309,926	98,174,778
Total general fund	\$17,689,002	(\$1,252,448)	\$16,436,554

Subdivision 2.

DEPARTMENT OF EMERGENCY SERVICES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,441,232	\$109,887	\$12,551,119
Operating expenses	8,905,310	(1,616,859)	7,288,451
Capital assets	740,000	(171,000)	569,000
Grants	18,673,247	(1,784,088)	16,889,159
Disaster costs	108,165,484	(56,719,643)	51,445,841
Total all funds	\$148,925,273	(\$60,181,703)	\$88,743,570
Less estimated income	137,518,175	(58,224,473)	79,293,702
Total general fund	\$11,407,098	(\$1,957,230)	\$9,449,868

Subdivision 3.

BILL TOTAL

	Base Level	Adjustments or Enhancements	Appropriation
Grand total general fund	\$29,096,100	(\$3,209,678)	\$25,886,422
Grand total special funds	<u>204,383,027</u>	<u>(26,914,547)</u>	<u>177,468,480</u>
Grand total all funds	\$233,479,127	(\$30,124,225)	\$203,354,902
Full-time equivalent positions	234.00	(0.00)	234.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$591,978, of which \$234,453 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Firefighter stipends	\$500,000	\$0
Disaster coordination contract	1,000,000	0
Veterans' bonus program	500,000	0
Firefighter training	374,172	0
Next Generation 9-1-1	386,000	0
Microsoft SQL enterprise for CAD	90,000	0
Message switch test server	70,000	0
Radio tower redundancy	80,000	0
Disaster coordination contract	200,000	0
Emergency response supplies	275,000	0
Veterans' cemetery land purchase	139,000	0
Flood mitigation	2,000,000	0
National guard readiness center	0	33,000,000
Emergency response equipment	0	569,000
Mobile repeaters and programming radios	0	<u>300,000</u>
Total all funds	\$5,614,172	\$33,869,000
Total other funds	<u>3,769,500</u>	<u>33,869,000</u>
Total general fund	\$1,844,672	\$0

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The adjutant general shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

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 that are received and deposited in the veterans' cemetery maintenance fund pursuant to sections 37-03-14 and 39-04-10.10 for the operation of the North Dakota veterans' cemetery for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. 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, 2017, and ending June 30, 2019. Any amounts transferred pursuant to this section must be reported to the director of the office of management and budget.

SECTION 6. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. The estimated income line item in subdivision 2 of section 1 of this Act includes \$300,000 of one-time funding from the strategic investment and improvements fund for mobile repeaters and programming radios.

SECTION 7. EXEMPTION. Any amounts carried over in the radio communications line item for the state radio tower package, in section 11 of chapter 50 of the 2015 Session Laws are not subject to section 54-44.1-11 and any unexpended funds are available for completing these projects during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 8. EXEMPTION. The amount appropriated in the tuition, recruiting, and retention line item in subdivision 1 of section 1 of chapter 50 of the 2015 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this appropriation may be used to provide tuition assistance, recruiting, and retention incentives to eligible members of the North Dakota national guard during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 9. EXEMPTION. The amount appropriated in the tuition, recruiting, and retention line item in section 15 of chapter 50 of the 2015 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this appropriation may be used to provide tuition assistance to eligible members of the North Dakota national guard, during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 10. EXEMPTION. Any amounts carried over pursuant to section 16 of chapter 50 of the 2015 Session Laws which are unexpended as of June 30, 2017, are not subject to section 54-44.1-11 and are available for payment of adjusted compensation to veterans. Any unexpended funds from this appropriation must be transferred to the veterans' cemetery trust fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. EXEMPTION. The amount appropriated in the grants line item in subdivision 1 of section 1 of chapter 50 of the 2015 Session Laws for payment of adjusted compensation to veterans is not subject to section 54-44.1-11 and any unexpended funds from this appropriation may be used 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, 2017, and ending June 30, 2019.

SECTION 12. EXEMPTION. Any amounts carried over in the radio communications line item for the state radio tower package pursuant to section 17 of chapter 50 of the 2015 Session Laws are not subject to section 54-44.1-11. Any unexpended funds are available for completing these projects during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 13. EXEMPTION. Any amounts carried over in the disaster costs line for grants to political subdivisions for amounts required to match federal dollars on road grade raising projects and federal emergency relief funding pursuant to section 18 of chapter 50 of the 2015 Session Laws which are unexpended as of June 30, 2017, are not subject to section 54-44.1-11. Any unexpended funds from this

appropriation are available for these purposes during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. EXEMPTION. The amounts appropriated for radio tower redundancy and next generation 911 in the radio communications line item in subdivision 2 of section 1 of chapter 50 of the 2015 Session Laws which are unexpended as of June 30, 2017, are not subject to section 54-44.1-11. Any unexpended funds are available for completing these projects during the biennium beginning July 1, 2017, and ending June 30, 2019.

Approved April 20, 2017

Filed April 21, 2017

CHAPTER 16

HOUSE BILL NO. 1017

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the game and fish department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the game and fish department for the purpose of defraying the expenses of the game and fish department, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$29,670,242	\$184,632	\$29,854,874
Operating expenses	13,668,944	1,669,186	15,338,130
Capital assets	5,497,996	832,960	6,330,956
Grants - Game and fish	7,334,412	2,315,772	9,650,184
Land habitat and deer depredation	16,922,681	901,496	17,824,177
Noxious weed control	700,000	25,000	725,000
Missouri River enforcement	282,540	1,317	283,857
Grant - Gift - Donation	827,519	(25,318)	802,201
Nongame wildlife conservation	120,000	0	120,000
Lonetree reservoir	1,823,005	(24,886)	1,798,119
Wildlife services	<u>384,400</u>	<u>115,600</u>	<u>500,000</u>
Total special funds	\$77,231,739	\$5,995,759	\$83,227,498
Full-time equivalent positions	163.00	0.00	163.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$420,749 of other funds, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. GRANTS, GIFTS, AND DONATIONS LINE ITEM. The grants, gifts, and donations line item in section 1 of this Act includes up to \$400,000 received by the game and fish department for surface damage, easements, or reclamation on department owned or managed properties as a result of mineral exploration and extraction activities.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 17

HOUSE BILL NO. 1018

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state historical society; 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 historical society for the purpose of defraying the expenses of the state historical society, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$13,604,636	(\$8,744)	\$13,595,892
Operating expenses	3,986,308	(100,414)	3,885,894
Capital assets	1,770,294	(22,641)	1,747,653
Grants	900,000	(300,000)	600,000
Cultural heritage grants	<u>293,454</u>	<u>(293,454)</u>	<u>0</u>
Total all funds	\$20,554,692	(\$725,253)	\$19,829,439
Less estimated income	<u>3,299,901</u>	<u>(144,106)</u>	<u>3,155,795</u>
Total general fund	\$17,254,791	(\$581,147)	\$16,673,644
Full-time equivalent positions	78.00	(3.00)	75.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$193,789, of which \$177,213 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Technology costs	\$53,969	\$0
Fort Totten and Stutsman repairs	1,025,000	0
Electronic records project	0	0
Dakota the dinosaur	1,400,000	0
Historic sites exhibits	251,000	0
Promotion fund for exhibits	93,000	0
Whitestone hill native memorial	75,000	0
Double ditch	<u>3,500,000</u>	<u>0</u>
Total all funds	\$6,397,969	\$0
Less estimated income	<u>3,475,000</u>	<u>0</u>
Total general fund	\$2,922,969	\$0

SECTION 4. REVOLVING FUND - APPROPRIATION. All fees collected by the state historical society and deposited in the revolving fund established pursuant to section 55-03-04 are appropriated to the state historical society for the purposes provided in chapter 55-03, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. GIFTS, GRANTS, AND BEQUESTS - APPROPRIATION. All gifts, grants, devises, bequests, donations, and assignments received by the state historical society and deposited with the state treasurer pursuant to section 55-01-04 are appropriated to the state historical society for the purposes provided in section 55-01-04, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. APPROPRIATION - STATE DISASTER RELIEF FUND - DOUBLE DITCH HISTORIC SITE REPAIRS. There is appropriated out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, and from other funds received from a grant from the parks and recreation department, the sum of \$500,000, or so much of the sum as may be necessary, to the state historical society for the purpose of defraying the expenses of double ditch historic site repairs, for the biennium beginning July 1, 2017, and ending June 30, 2019. For the purposes of calculating the unobligated balance of the state disaster relief fund under section 57-51.1-07.5, the moneys appropriated in this section from the state disaster relief fund may not be considered an obligation of the state disaster relief fund until after July 31, 2017. The funding appropriated in this section is considered one-time funding.

SECTION 7. EXEMPTION - DOUBLE DITCH HISTORIC SITE REPAIRS. The amounts appropriated to the state historical society from the general fund, the state disaster relief fund, and Bank of North Dakota loan proceeds for double ditch historic site repairs, as contained in sections 5 and 6 of chapter 52 of the 2015 Session Laws, are not subject to the provisions of section 54-44.1-11. Any unexpended funds from these appropriations are available for defraying the expenses of the double ditch historic site repairs during the biennium beginning July 1, 2017, and ending June 30, 2019.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 18**HOUSE BILL NO. 1019**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department; to amend and reenact sections 55-08-06 and 55-08-07.1 of the North Dakota Century Code, relating to permits for motor vehicles and parks and the recreation concession revolving fund; to provide a grant to the international peace garden; to authorize the transfer of Dakota institute inventory; to provide exemptions; 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 parks and recreation department for the purpose of defraying the expenses of the parks and recreation department, for providing funding to the Lewis and Clark interpretive center, and for providing a grant to the International Peace Garden, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

PARKS AND RECREATION DEPARTMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administration	\$3,043,722	\$625,006	\$3,668,728
Park operations and maintenance	19,877,931	692,627	20,570,558
Recreation	6,407,120	632,434	7,039,554
Total all funds	\$29,328,773	\$1,950,067	\$31,278,840
Less estimated income	14,517,835	3,871,726	18,389,561
Total general fund	\$14,810,938	(\$1,921,659)	\$12,889,279
Full-time equivalent positions	66.00	(3.50)	62.50

Subdivision 2.

INTERNATIONAL PEACE GARDEN

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
International peace garden	\$973,699	(\$97,370)	\$876,329
Total general fund	\$973,699	(\$97,370)	\$876,329

Subdivision 3.

LEWIS AND CLARK INTERPRETIVE CENTER

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
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Lewis and Clark interpretive center	<u>\$918,279</u>	<u>\$332,408</u>	<u>\$1,250,687</u>
Total all funds	\$918,279	\$332,408	\$1,250,687
Less estimated income	0	<u>362,019</u>	<u>362,019</u>
Total general fund	\$918,279	(\$29,611)	\$888,668

Subdivision 4.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$16,702,916	(\$2,048,640)	\$14,654,276
Grand total special funds	<u>14,517,835</u>	<u>4,233,745</u>	<u>18,751,580</u>
Grand total all funds	\$31,220,751	\$2,185,105	\$33,405,856

Funding is adjusted for operating expenses, including inflationary increases at state parks for water, garbage, fuel, electricity, propane, insurance, and for operating costs related to adding new buildings and campground loops at various state parks. In addition, funding of \$100,000 from other funds from the department of transportation is added for expenses at the Lewis and Clark interpretive center.

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$181,775, of which \$6,572 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium.

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Parks enhancements	\$12,751,611	\$0
Parks equipment	550,000	0
Community grant program	500,000	0
International Peace Garden capital project	321,915	0
Trail lease renewals	200,000	0
Statewide comprehensive outdoor recreation plan	90,000	0
Repairs and Lewis and Clark interpretive center	75,000	0
50 th anniversary	9,000	0
Retirement leave payouts	58,000	0
International Peace Garden demolition project	<u>200,000</u>	<u>0</u>
Total all funds	\$14,755,526	\$0
Less estimated income	<u>345,000</u>	<u>0</u>
Total general fund	\$14,410,526	\$0

SECTION 4. GAME AND FISH OPERATING FUND - TRANSFER - BOAT RAMP OPERATION AND MAINTENANCE. The sum of \$122,000, or so much of the sum as may be necessary, included in the park operations and maintenance line item in subdivision 1 of section 1 of this Act, is from the game and fish operating fund, or federal or other funds available to the game and fish department, and must be transferred to the parks and recreation department for maintenance, operating, and extraordinary repairs expenses relating to boat ramps at state parks for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. ESTIMATED INCOME - WATER COMMISSION GRANT - EXEMPTION - GRANT TO STATE HISTORICAL SOCIETY AND RECREATION OPPORTUNITIES ON SOVEREIGN LANDS. The estimated income line item in section 1 of this Act includes \$1,000,000 of grant funding received from the state

water commission during the 2015-17 biennium for developing recreation opportunities on sovereign lands in the state. Notwithstanding section 4 of chapter 54 of the 2015 Session Laws, the parks and recreation department shall use this \$1,000,000 to provide:

1. A grant of \$500,000 to the state historical society for defraying the expenses of double ditch historic site repairs for the period beginning with the effective date of this Act, and ending June 30, 2019; and
2. Up to \$500,000 for the purpose of developing recreation opportunities on sovereign lands in the state for the period beginning with the effective date of this Act, and ending June 30, 2019.

SECTION 6. ESTIMATED INCOME - DEPARTMENT OF TRANSPORTATION GRANT. The estimated income line item includes \$100,000 of grant funding from the department of transportation for the purpose of defraying expenses for the Lewis and Clark interpretive center.

SECTION 7. EXEMPTION. Up to \$500,000 of community grants funding from the general fund included in the recreation line item contained in section 34 of chapter 49 of the 2015 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation may be expended during the biennium beginning July 1, 2017, and ending June 30, 2019, for the purposes provided in section 55-08-14.1.

SECTION 8. EXEMPTION. Any funds remaining in the international peace garden line item for repair of the peace tower at the International Peace Garden, in subdivision 2 of section 30 of chapter 15 of the 2013 Session Laws, and continued in the 2015-17 biennium pursuant to section 9 of chapter 53 of the 2015 Session Laws, is not subject to section 54-44.1-11 and any unexpended funds are available for completing the project during the biennium beginning July 1, 2017, and ending June 30, 2019. Funding available for use by the International Peace Garden in this section will be subject to the International Peace Garden raising dollar for matching funds from nonstate of North Dakota sources consistent with the 2013 North Dakota legislative language. The parks and recreation department shall review and accept engineering proposals and specifications before committing additional funds to the project and shall assist with bidding and construction of any work associated with this section.

SECTION 9. EXEMPTION - 2015-17 MATCHING FUNDS REQUIREMENT - INTERNATIONAL PEACE GARDEN. Notwithstanding the provisions of section 9 of chapter 53 of the 2015 Session Laws, relating to matching requirements, the International Peace Garden may spend up to \$100,000 of the funds appropriated in subdivision 2 of section 30 of chapter 15 of the 2013 Session Laws and continued in the 2015-17 biennium, without raising dollar-for-dollar matching funds before spending the funds, for the purpose of completing the demolition project of the peace towers, for the period beginning with the effective date of this Act and ending June 30, 2017.

SECTION 10. EXEMPTION. Any unexpended funds in the Lewis and Clark interpretive center line item in section 34 of chapter 49 of the 2015 Session Laws, and any unexpended funds of up to \$950,000 of one-time funding for park enhancements included in the natural resources line item in section 34 of chapter 49 of the 2015 Session Laws, designated for the Lewis and Clark interpretive center, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation

may be expended during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. EXEMPTION. Any unexpended funds from the outdoor heritage grant are not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation may be expended during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 12. EXEMPTION. Up to \$116,000 of Pembina gorge area funding from the general fund included in the natural resources line item contained in section 1 of chapter 53 of the 2015 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation may be expended during the biennium beginning July 1, 2017, and ending June 30, 2019, for renting property in the Pembina gorge area for the purpose of providing office space for employees or individuals responsible for monitoring or patrolling the trail systems in the area, designing and implementing a radio communication system for continued monitoring and patrolling of the trail systems, and providing matching funds for grant-funded trail development projects in the Pembina Gorge.

SECTION 13. LEGISLATIVE INTENT - STATE PARK MARINA SWIMMING RULES. It is the intent of the sixty-fifth legislative assembly that the parks and recreation department establish rules for state park marinas to allow an individual currently renting a slip at the marina and the individual's immediate family members to swim in the marina area subject to the individual and each family member signing a release of liability waiver form developed by the department.

SECTION 14. AMENDMENT. Section 55-08-06 of the North Dakota Century Code is amended and reenacted as follows:

55-08-06. Permits for motor vehicles.

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

1. The director may allow other agencies or organizations that have leased state parks, state recreational areas, reserves, or facilities to retain entrance and special permit fees collected by the lessee.

2. The director may exempt all or any part of any state park, state recreational area, or reserve from the requirement of the motor vehicle permit and fee, for any activity or period, when in the director's judgment it is desirable to do so; provided, however, that no further exceptions may be made after state park revenue bonds are issued and while the bonds are outstanding.

SECTION 15. AMENDMENT. Section 55-08-07.1 of the North Dakota Century Code is amended and reenacted as follows:

55-08-07.1. State parks and recreation concession revolving fund.

The director shall maintain a state parks and recreation concession revolving fund to be used for the following:

1. Procurement and maintenance of an inventory of food, nonintoxicating beverages, and other merchandise and supplies of a suitable nature for the operation of concession stands, including payment of costs and travel expenses necessarily incurred to obtain or sell such items.
2. Repair, replacement, construction, and maintenance of concession buildings, facilities, and properties contained therein.

~~The sum of fifty thousand dollars is hereby established in the state parks and recreation concession revolving fund for the purpose provided in this section as a limit on the fund balance after accrued liabilities on June thirtieth of each year. Any surplus in this fund in excess of fifty thousand dollars on June thirtieth of each year must be transferred to the state park operating fund.~~

SECTION 16. NORTHERN PLAINS NATIONAL HERITAGE AREA GRANTS.

The parks and recreation department may apply for northern plains heritage grants during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 17. TRANSFER OF DAKOTA INSTITUTE INVENTORY. The parks and recreation department shall transfer the name Dakota institute and all rights, title, interests, and copyrights and up to eighty percent of any remaining inventory of any Dakota institute publication, book, or other document or production, regardless of format to Bismarck state college. Bismarck state college may transfer any rights, title, interests, copyrights, inventory of any of the Dakota institute's publications, books, or other documents or productions, regardless of format, to the author or producer of the document or production.

SECTION 18. EMERGENCY. The sum of \$1,000,000 for providing a grant to the state historical society, and for developing recreation opportunities on sovereign lands in the state appropriated in the administration line item in section 1 of this Act, and sections 5 and 9 of this Act are declared to be an emergency measure.

Disapproved April 25, 2017

Filed May 11, 2017

CHAPTER 19

HOUSE BILL NO. 1020

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide an appropriation to the industrial commission; to amend and reenact section 57-51.1-07, subsection 10 of section 61-02-02, section 61-02-08, subsection 1 of section 61-02-78, section 61-02-79, the new section to chapter 61-03, as created by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, and sections 61-29-06, 61-40-05, and 61-40-11 of the North Dakota Century Code, relating to the oil extraction tax development fund, the definition of water conveyance project, the state water commission chairman and vice chairman, the infrastructure revolving loan fund, a Bank of North Dakota line of credit, economic analyses for certain water projects, management of the Little Missouri scenic river, the authority of the western area water supply authority, and water rates of the western area water supply authority; to provide for budget section approval; to provide for a state engineer study; to provide for an industrial commission study; to provide for a legislative management study; to provide for reports; to provide a statement of legislative intent; to designate funding; to provide for a transfer; to provide exemptions; to provide a contingent effective date; 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 from special funds derived from federal funds and other income, to the state water commission for the purpose of defraying the expenses of the state water commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administrative and support services	\$5,535,618	\$97,568	\$5,633,186
Water and atmospheric resources	<u>863,400,218</u>	<u>(146,859,929)</u>	<u>716,540,289</u>
Total all funds	\$868,935,836	(\$146,762,361)	\$722,173,475
Full-time equivalent positions	97.00	(4.00)	93.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$257,498 of other funds, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION APPROVAL. In addition to the amounts appropriated in section 1 of this Act, any additional amounts in the resources trust fund and water development trust fund which become available are appropriated, subject to budget section approval, to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY. Section 54-44.1-11 does not apply to funding for grants or water-related

projects included in the water and atmospheric resources line item in section 1 of this Act. However, this exclusion is only in effect for two years after June 30, 2019. Any unexpended funds appropriated from the resources trust fund after that period has expired must be transferred to the resources trust fund and any unexpended funds appropriated from the water development trust fund after that period has expired must be transferred to the water development trust fund.

SECTION 5. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS - TRANSFERS - BUDGET SECTION APPROVAL.

1. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act from funds available in the resources trust fund and water development trust fund, \$298,875,000 is designated as follows:
 - a. \$120,125,000 for water supply;
 - b. \$27,000,000 for rural water supply;
 - c. \$136,000,000 for flood control; and
 - d. \$15,750,000 for general water.
2. The funding designated in this section is for the specific purposes identified; however, the state water commission may transfer funding among these items, subject to budget section approval and upon notification to the legislative management's water topics overview committee.

SECTION 6. LEGISLATIVE INTENT - MOUSE RIVER FLOOD CONTROL PROJECT FUNDING. Except for funding provided during bienniums prior to the 2017-19 biennium, it is the intent of the sixty-fifth legislative assembly that the state provide no more than \$193,000,000 of state funding for Mouse River flood control projects within the city limits of Minot. It is the intent of the sixty-fifth legislative assembly that the \$193,000,000 be made available during the 2017-19, 2019-21, 2021-23, and 2023-25 bienniums.

SECTION 7. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT - BUDGET SECTION APPROVAL. It is the intent of the sixty-fifth legislative assembly that the state water commission provide, in the form of a grant, up to \$30,000,000, of which \$17,000,000 is for the completion of the planning and permitting process and \$13,000,000 is to initiate construction of phase one prioritized project features identified in accordance with subsection 2 of section 8 of this Act, to the Garrison diversion conservancy district for the Red River valley water supply project, for the biennium beginning July 1, 2017, and ending June 30, 2019. The Garrison diversion conservancy district must receive budget section approval prior to changing any funding between designations identified in this section.

SECTION 8. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL. Any funding received by the Garrison diversion conservancy district from the state water commission for the Red River valley water supply project during the biennium beginning July 1, 2017, and ending June 30, 2019, is subject to the following requirements:

1. Any funding received for the completion of the planning and permitting process of the Red River valley water supply project must result in the following accomplishments:

- a. The completed Red River valley water supply plan document that will be the basis and justification for project construction and must include alternative selection, water supply needs, projected project costs, easement acquisitions, environmental regulation compliance to include the Boundary Waters Treaty of 1909, and an implementation schedule;
 - b. Acquisition of all state and federal permits required for the construction of any project features intended to be constructed with funding provided during the 2017-19 biennium;
 - c. A signed bureau of reclamation water service contract agreeing to a minimum of one hundred sixty-five cubic feet per second over a minimum of forty years or equivalent to ensure an adequate water source for the project's needs;
 - d. Prioritized project features for phase one construction; and
 - e. A recommendation for funding options for all phases of the Red River valley water supply project.
2. Any funding received to initiate construction of phase one prioritized project features identified in subsection 1 may be spent and construction of phase one may begin only after the budget section receives and approves certification from the state water commission and the state engineer that all items listed in subsection 1 have been accomplished.
 3. Quarterly progress reports on the Red River valley water supply project from the Garrison diversion conservancy district to the water topics overview committee of the legislative management, during the 2017-18 interim.

SECTION 9. WESTERN AREA WATER SUPPLY AUTHORITY - BANK OF NORTH DAKOTA LOAN - REPORTS. Notwithstanding section 5 of chapter 500 of the 2011 Session Laws, the Bank of North Dakota shall consolidate the \$40,000,000 loan to the western area water supply authority authorized in section 5 of chapter 20 of the 2013 Session Laws, the \$50,000,000 loan to the western area water supply authority authorized in section 2 of chapter 500 of the 2011 Session Laws, and the \$25,000,000 loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws. The terms and conditions of the consolidation loan must be negotiated by the western area water supply authority and the Bank of North Dakota. The western area water supply authority is not obligated to repay principal on loans from the resources trust fund for the period beginning July 1, 2017, and ending June 30, 2018. The interest rate on the \$10,000,000 loan to the western area water supply authority authorized in section 4 of chapter 500 of the 2011 Session Laws must be 2.5 percent on any outstanding balance remaining after the effective date of this Act. The Bank of North Dakota shall report the terms of the consolidation loan upon its completion to the legislative management's water topics overview committee during the 2017-18 interim. The western area water supply authority shall provide its monthly financial statements and industrial sales to the legislative council for the legislative management's water topics overview committee's review during the 2017-18 interim.

SECTION 10. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE SHORTFALL - BUDGET SECTION APPROVAL. If the western area water supply authority defaults on its payment of the principal or interest on the consolidation loan provided for in section 9 of this Act or the revenue bonds or other financing provided for in section 12 of this Act, the Bank of North Dakota shall notify the legislative

council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.

SECTION 11. APPROPRIATION - INDUSTRIAL COMMISSION STUDY - WESTERN AREA WATER SUPPLY AUTHORITY - REPORT TO LEGISLATIVE MANAGEMENT. There is appropriated out of any moneys in the resources trust fund, in the state treasury, the sum of \$150,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of conducting an independent study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the western area water supply authority, for the period beginning with the effective date of this Act, and ending June 30, 2019. The study must provide information regarding the financial impact to the western area water supply authority, its members and customers, the financial viability of the authority, and options available to the authority for debt servicing. The industrial commission may form a nonvoting advisory committee chaired by the state engineer to provide input regarding the scope of the study and to receive reports on the status of the study. The industrial commission shall report to the legislative management's interim water topics overview committee on the results of the study by June 1, 2018.

SECTION 12. ACTIONS RESULTING FROM THE WESTERN AREA WATER SUPPLY AUTHORITY STUDY.

1. If the industrial commission determines, based on the study directed in section 11 of this Act, that it is feasible and desirable to lease or sell the industrial water supply assets of the western area water supply authority, the industrial commission shall develop a timeline to complete the lease or the sale of the industrial water assets of the western area water supply authority and report to the legislative management's interim water topics overview committee.
2. If the industrial commission determines, based on the study directed in section 11 of this Act, that it is not feasible and desirable to lease or sell the industrial water supply assets of the western area water supply authority, notwithstanding section 5 of chapter 500 of the 2011 Session Laws, the western area water supply authority shall, with the assistance of the industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North Dakota through the issuance of revenue bonds or other financing options acceptable to the industrial commission and Bank of North Dakota.

SECTION 13. STATE ENGINEER - FLOOD HAZARD RISK MANAGEMENT STUDY - ADDITIONAL INCOME - APPROPRIATION. The water and atmospheric resources line item in section 1 of this Act includes \$30,000 of which \$15,000 is from the resources trust fund and \$15,000 of other funds received from Ward County, for the purpose of conducting a flood hazard risk management framework study and demonstration in section 14 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019. The state engineer may seek funding from federal, local, and private sector co-funding partnerships. Any fees collected from data users and partners and any other funds from public or private sources, including federal grants and county revenue contributions, are appropriated to the state engineer for the study and for expanding the project to additional counties for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. LEGISLATIVE MANAGEMENT STUDY - FLOOD HAZARD RISK MANAGEMENT. During the 2017-18 interim, the legislative management shall study issues related to the state's development of a statewide flood hazard risk

management framework by granting authority to the state engineer to perform a study and proof of concept demonstration to implement statewide flood risk management capabilities for assessing, managing, and reducing property-specific flood risk.

1. In performing the study and proof of concept demonstration, the state engineer may leverage, coordinate, and partner with the North Carolina floodplain mapping program and with Ward County to conduct the study and proof of concept demonstration. The state engineer shall acquire and leverage data necessary to support the study and proof of concept demonstration including:
 - a. Footprints and elevations from current and future light detection and ranging data collections that meet federal emergency management agency risk mapping, assessment, and planning standards;
 - b. First floor elevations and elevation certificates from local planning and zoning offices or light detection and ranging data;
 - c. Parcel, address, and imagery data necessary for individual property flood hazard identification, assessment, and reduction; and
 - d. Any other data the state engineer deems necessary to meet the objectives in creating the database.
2. To complete the pilot project, the state engineer shall:
 - a. Construct and maintain flood hazard and risk data in a spatial, relational database;
 - b. Disseminate flood hazard and risk data through a digital display environment prompted through dynamic querying;
 - c. Coordinate, incentivize, and partner with a least one county to obtain the necessary parcel data and other data needed for this study and serve as the repository for the property flood risk dataset;
 - d. Establish a technical committee consisting of federal, state, local, and private sector stakeholders and providers to the greatest extent possible to allow data sharing, coordination, synergy, and partnering;
 - e. Work with the North Carolina floodplain mapping program to incorporate the property risk dataset into the multistate flood risk information system maintained by North Carolina, augment the dataset with federal emergency management agency digital flood insurance data, and assess any data or other gaps preventing this state's full use of the system;
 - f. Make the data publicly available on the state water commission's website in an easily accessible and useable format;
 - g. Provide technical assistance to data users, including reports and analysis as needed; and
 - h. Work with the federal emergency management agency and the study county to enable the communities and property owners to use the elevation, light detection and ranging, and other data provided on the

website to submit letters of map amendment or revision to the federal emergency management agency.

3. The state engineer shall report to the legislative management as requested by the legislative management. At the conclusion of the study, the state engineer shall provide the following information to the legislative management:
 - a. A description of the engineer's current cooperative technical flood mapping partnership with the federal emergency management agency and any additional authority, staffing, and funding required to create a fully independent and self-sustaining state flood mapping program in lieu of the federal emergency management agency program, including the processing of letters of map change;
 - b. A detailed estimate of overall program costs and flood risk reductions of a self-sustaining state flood mapping program; and
 - c. A county assessment of the private, county, state, and federal data and resources that are currently available as compared to the resources that would be required to fully use North Carolina's flood risk information system for flood risk management, including recommendations for improvement or the statewide expansion of the project established under this study and suggested funding mechanisms and alternatives for data dissemination, which may include a one-state online repository or the provision of data by local planning and zoning offices.

SECTION 15. 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. ~~Five~~Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed ~~one million~~ two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and

- b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
 - c. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.
2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
 4. Thirty percent must be allocated and credited to the state's general fund.

SECTION 16. 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. Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed one million two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste

products utilization; and for the making of grants and loans in connection therewith.

- c. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.
2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
3. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
4. Thirty percent must be allocated and credited to the state's general fund.

¹⁰ **SECTION 17. AMENDMENT.** Subsection 10 to section 61-02-02 of the North Dakota Century Code as amended by section 3 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

10. "Water conveyance project" means any surface ~~or subsurface~~ drainage works, bank stabilization, or snagging an clearing of water courses.

¹¹ **SECTION 18. AMENDMENT.** Section 61-02-08 of the North Dakota Century Code as amended by section 6 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

61-02-08. Meetings of commission.

The commission shall hold at least one meeting every two months at places as it, by resolution, may provide. The governor shall serve as chairman, and the commission shall select a member of the commission to serve as vice chairman. The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. ~~The governor, as chairman, or governor's appointed representative shall preside at all meetings of the commission and in case of the governor's, and in case of the absence or disability of the governor and governor's appointed representative, the vice chairman shall preside. The seven appointed members of the commission shall select an appointed member to serve as vice chairman of the commission.~~

SECTION 19. AMENDMENT. Subsection 1 of section 61-02-78 of the North Dakota Century Code is amended and reenacted as follows:

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund, ~~not to exceed a total deposit from oil extraction moneys of twenty-six million dollars,~~ are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.

¹⁰ Section 61-02-02 was also amended by section 3 of House Bill No. 1374, chapter 419.

¹¹ Section 61-02-08 was also amended by section 6 of House Bill No. 1374, chapter 419.

SECTION 20. AMENDMENT. Section 61-02-79 of the North Dakota Century Code is amended and reenacted as follows:

61-02-79. Bank of North Dakota - Line of credit.

The Bank of North Dakota shall extend a line of credit not to exceed ~~two hundred seventy-five~~ million dollars at a rate ~~that of one and one-half percent over the three month London interbank offered rate, but~~ may not exceed ~~one and three-quarters~~ three percent to the state water commission. The state water commission shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission may access the line of credit, as necessary, to provide funding as authorized by the legislative assembly for ~~water supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the 2015 session laws, and water supply projects approved before June 30, 2017~~ water supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the 2019 session laws, and water supply projects approved before June 30, 2017 and flood control projects that have approval for funding before June 30, 2017 and flood control projects that have approval for funding before June 30, 2019.

¹² **SECTION 21.** The new section to chapter 61-03 of the North Dakota Century Code created by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

Economic analysis process required for certain projects.

The state engineer shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than ~~seven hundred fifty thousand one~~ million dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the state engineer shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

SECTION 22. AMENDMENT. Section 61-29-06 of the North Dakota Century Code is amended and reenacted as follows:

61-29-06. Management.

Channelization, reservoir construction, or diversion other than for agricultural ~~or recreational, or temporary use~~ purposes and the dredging of waters within the confines of the Little Missouri scenic river and all Little Missouri River tributary streams are expressly prohibited. Flood control dikes may be constructed within the floodplain of the Little Missouri River. Diking and riprapping for bank erosion control shall be permitted within the confines of the Little Missouri scenic river. The construction of impoundments for any purpose on the Little Missouri mainstream shall be prohibited.

This chapter shall in no way affect or diminish the rights of owners of the land bordering the river to use the waters for domestic purposes, including livestock watering, or any other rights of riparian landowners.

SECTION 23. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

¹² Section 61-03-21.4 was created by section 12 of House Bill No. 1374, chapter 419.

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. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
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 depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 61-40-11.
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.
21. Issue revenue bonds to repay its loan obligations to the Bank of North Dakota. For the purpose of issuing such revenue bonds, the provisions of chapters 40-35 and 40-36 apply to the extent necessary and consistent with section 12 of this Act.

SECTION 24. AMENDMENT. Section 61-40-11 of the North Dakota Century Code is amended and reenacted as follows:

61-40-11. Water rates.

~~The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The industrial commission may authorize the authority to contract at competitive, floating, market rates for industrial water depot and lateral retail sales. The authority shall provide a report on the rates to the commission and legislative management's water topics overview committee on a regular basis.~~ The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 61-40-10 which are paid for by industrial water depot and lateral sales.

SECTION 25. TRANSFER - INFRASTRUCTURE REVOLVING LOAN FUND TO RESOURCES TRUST FUND. On July 1, 2017, the state treasurer shall transfer any oil extraction moneys exceeding \$26,000,000 which have been deposited in the infrastructure revolving loan fund from the infrastructure revolving loan fund to the resources trust fund.

SECTION 26. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS INDUSTRIAL WATER USE. During the 2017-18 interim, the legislative management shall study industrial water use of the oil and gas industry. The study must include the recapture of water used in fracking, the recycling of water used in fracking, and other oil and gas activities, fracking methods which do not require the use of water, and taxes or fees other states charge for water used in the oil and gas industry.

SECTION 27. STATE WATER COMMISSION - 2019-21 BIENNIUM BUDGET.

The state water commission, in accordance with section 54-44.1-04, shall prepare its 2019-21 biennium budget request and the office of management and budget shall prepare the draft appropriations Act under section 54-44.1-16 for the state water commission for consideration by the sixty-sixth legislative assembly with funding provided separately in a salaries and wages line item, operating expenses line item, capital assets line item, project carryover line item, new projects line item, and any additional line items as determined necessary by the commission or the office of management and budget. The state water commission shall present funding for projects in a manner consistent with the funding designations identified in section 5 of this Act, for the 2019-21 biennium.

SECTION 28. EFFECTIVE DATE - EXPIRATION DATE. Section 15 of this Act becomes effective on August 1, 2017, is effective through July 31, 2019, and after that date is ineffective. Section 16 of this Act becomes effective on August 1, 2019. Sections 17, 18, and 21 of this Act become effective on August 1, 2017.

SECTION 29. CONTINGENT EFFECTIVE DATE. Section 23 of this Act is contingent on certification by the industrial commission to the legislative council that the industrial commission has determined the western area water supply authority shall, with the assistance of the industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North Dakota through the issuance of revenue bonds, as provided under subsection 2 of section 12 of this Act.

SECTION 30. EMERGENCY. Sections 9, 10, 11, 12, 22, 23, and 29 of this Act are declared to be an emergency measure.

Approved May 2, 2017

Filed May 3, 2017

CHAPTER 20

HOUSE BILL NO. 1021

(Appropriations Committee)

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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Workforce safety and insurance operations	\$61,865,170	\$10,541,489	\$72,406,659
Total special funds	\$61,865,170	\$10,541,489	\$72,406,659
Full-time equivalent positions	260.14	0.00	260.14

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in Section 1 of this Act includes the sum of \$719,707 for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Computer software replacement project	\$6,000,000	\$8,120,097
Litigation costs	1,000,000	0
Extranet enhancement	0	538,500
Internal reporting system	<u>0</u>	<u>275,000</u>
Total other funds	\$7,000,000	\$8,933,597

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. Workforce safety and insurance shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 21

HOUSE BILL NO. 1022

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the retirement and investment office; and to provide for a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys from special funds derived from income for the purpose of defraying the expenses of the retirement and investment office, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,340,551	\$85,019	\$4,425,570
Operating expenses	990,874	(128,390)	862,484
Contingencies	<u>82,000</u>	<u>(30,000)</u>	<u>52,000</u>
Total special funds	\$5,413,425	(\$73,371)	\$5,340,054
Full-time equivalent positions	19.00	0.00	19.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$50,436 from special funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the state investment board, the retirement and investment office may transfer from their contingencies line item in section 1 of this Act to all other line items. The agency shall notify the office of management and budget of each transfer made pursuant to this section.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 22

HOUSE BILL NO. 1023

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public employees retirement system; to provide for a transfer; to provide for solicitations of bids for the public employee health benefits coverage; to provide for a study; to create and enact sections 54-35-02.9 and 54-35-02.10 and a new subsection to section 54-52-04 of the North Dakota Century Code, relating to the public employee health care coverage committee and the authority of the retirement board; to amend and reenact sections 54-35-02.4 and 54-52.1-08.2 of the North Dakota Century Code, relating to the employee benefits programs committee; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys from special funds derived from income to the public employees retirement system for the purpose of defraying the expenses of the public employees retirement system, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,315,360	\$809	\$6,316,169
Operating expenses	2,753,643	(61,422)	2,692,221
Contingencies	<u>250,000</u>	<u>0</u>	<u>250,000</u>
Total special funds	\$9,319,003	(\$60,613)	\$9,258,390
Full-time equivalent positions	34.50	0.00	34.50

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$95,431 from other funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Public employees retirement system - temporary salaries	\$100,000	\$0
Desktop support services	<u>77,370</u>	<u>0</u>
Total special funds	\$177,370	\$0

SECTION 4. APPROPRIATION LINE ITEM TRANSFERS. The public employees retirement system office may transfer from their contingencies line item in section 1 of this Act to all other line items. The agency shall notify the office of management and budget of each transfer made pursuant to this section.

SECTION 5. LEGISLATIVE INTENT - ELECTRONIC DISTRIBUTION OF MATERIALS. It is the intent of the sixty-fifth legislative assembly that the public employees retirement system office create operating efficiencies when feasible by

discontinuing the distribution of paper materials, including newsletters and benefit statements. It is further the intent of the sixty-fifth legislative assembly that the public employees retirement system office develop procedures to electronically distribute materials or provide access to materials through member self-service website applications.

SECTION 6. PUBLIC EMPLOYEE HEALTH INSURANCE PLANS - SOLICITATION OF BIDS AND CONTRACTING.

1. During the 2017-18 interim, in consultation with the public employee health care coverage committee and based on the recommendations of the legislative management, the retirement board shall design requests for proposals and shall solicit bids under section 54-52.1-04 for hospital, medical, and prescription drug benefits coverage for the active employee plan for the 2019-21 biennium. The board's primary bid must be for a self-insurance plan under section 54-52.1-04.2, and in accordance with section 54-52.1-04.2, the solicitation for bids must include a request for proposals for a fully insured plan or hybrid fully insured plan, or both.
2. Notwithstanding contrary provisions of law, in response to bids received under subsection 1, the board shall select the carrier or carriers and shall contract for the plan or plans that best serve the interests of the state and its eligible employees. In considering the interests of the state and its employees, the board's considerations must include consideration of flexibility of plan design, employee out-of-pocket costs, and premium. Except as otherwise provided by the sixty-sixth legislative assembly, the contract entered by the board under this subsection is effective for a term of two years and is subject to renewal and rebidding as provided under chapter 54-52.1.
3. A uniform group insurance program contract for hospital, medical, and prescription drug benefits coverage for active employees in effect for the period July 1, 2017, through June 30, 2019, terminates on June 30, 2019, after which the plan entered under subsection 2 becomes effective. Notwithstanding any law to the contrary, the uniform group insurance program contract for hospital, medical, and prescription drug benefits coverage for active employees entered by the retirement board which becomes effective July 1, 2017, is not subject to renewal for an additional two-year term for the 2019-21 biennium.

SECTION 7. PUBLIC EMPLOYEE HEALTH CARE COVERAGE COMMITTEE STUDY - REPORTS.

1. During the 2017-18 interim, the public employee health care coverage committee shall study, review, and make recommendations regarding the terms of the retirement board's requests for proposals for hospital, medical, and prescription drug benefits coverage for active employees for the 2019-21 biennium as required under section 6 of this Act. In making recommendations, the committee shall consider the interests of the state and its eligible employees, including flexibility of plan design, employee out-of-pocket costs, and premium.
2. Before July 1, 2018, and then again before the end of the interim, the committee shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the legislative management, and the legislative management shall report the findings and

recommendations to the retirement board, the public employees retirement system, and the sixty-sixth legislative assembly.

SECTION 8. AMENDMENT. Section 54-35-02.4 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.4. Employee benefits programs committee - Powers and duties.

1. The employee benefits programs committee shall consider and report on ~~those~~ legislative measures and proposals over which ~~it takes~~ the committee exercises jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision, ~~and health and retiree health plans of state employees or employees of any political subdivision and the uniform group insurance program.~~ The committee shall make a thorough review of any measure or proposal over which ~~it takes~~ under ~~its~~ the committee exercises jurisdiction, including an actuarial review. The committee shall take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee ~~must~~ shall include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee shall report its findings and recommendations, along with any necessary legislation, to the legislative management and to the legislative assembly.
2. To carry out its responsibilities, the committee, or its designee, may:
 - a. Enter contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. Each retirement, insurance, or retiree insurance program shall pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program.
 - b. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time request.
 - c. Establish rules for its operation of the committee, including the submission and review of proposals and the establishing of standards for actuarial review.
3. The committee may solicit draft measures and proposals from interested persons during the interim between legislative sessions, and may also study measures and proposals referred to ~~it~~ the committee by the legislative assembly or the legislative management.
4. ~~A copy of the committee's report concerning any legislative measure shall, if that measure~~ if a legislative proposal over which the committee exercised jurisdiction is introduced for consideration by a legislative assembly, a copy of the related committee report must be appended to the copy of that measure ~~which is referred to a standing committee.~~
5. A legislative measure affecting a public employees retirement program, ~~public employees health insurance program, or public employee retiree health insurance program~~ or uniform group insurance program may not be introduced in either house unless ~~it~~ the measure is accompanied by a report

from the committee. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether any legislative measure affects a program.

6. ~~Any~~An amendment made during a legislative session to a legislative measure ~~affecting~~which would affect a public employees retirement program, ~~public employees health insurance program, or public employee retiree health insurance or uniform group insurance program~~ may not be considered by a standing committee unless it is accompanied by a report from the employee benefits programs committee.
7. Any legislation enacted in contravention of this section is invalid and of no force and effect, and any benefits provided under such legislation must be reduced to the level current prior to enactment.
8. As used in this section, the term "uniform group insurance plan" does not include a uniform group insurance plan for hospital, medical, or prescription drug benefits coverage. The scope of the subject matter over which this committee has jurisdiction does not include legislative proposals or measures over which the public employee health care coverage committee has jurisdiction under section 54-35-02.10.

SECTION 9. Section 54-35-02.9 of the North Dakota Century Code is created and enacted as follows:

54-35-02.9. Public employee health care coverage committee - Appointment.

1. During each interim, the public employee health care coverage committee must be appointed as follows:
 - a. Four members of the senate appointed by the majority leader of the senate;
 - b. Two members of the senate appointed by the minority leader of the senate;
 - c. Four members of the house of representatives appointed by the majority leader of the house of representatives;
 - d. Two members of the house of representatives appointed by the minority leader of the house of representatives; and
 - e. No more than four nonvoting members appointed by the governor.
2. 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. However, a committee member appointed by the governor is not entitled to per diem and is entitled to mileage and expenses as provided by law for state officers and employees which is to be paid by the governor or by the employing agency if that member is an employee of the state.
3. The committee shall meet at least quarterly during the interim between regular legislative sessions.

SECTION 10. Section 54-35-02.10 of the North Dakota Century Code is created and enacted as follows:

54-35-02.10. Public employee health care coverage committee - Powers and duties - Standing committees - Legislative management.

1. During the interim between regular legislative sessions, the public employee health care coverage committee shall:
 - a. Receive from the public employees retirement system quarterly reports on the activities of the retirement board and the public employees retirement system relating to the health care coverage, including the status of and any implemented or proposed changes to the health care coverage. The quarterly report must include status reports on contracts and contract negotiations relating to the health care coverage.
 - b. Monitor the health care coverage, which may include receipt of public or aggregate utilization data, wellness initiative reports, and customer satisfaction surveys.
 - c. Investigate the feasibility and desirability of making changes to the health care coverage and related contracts for future bienniums and prepare and recommend legislation to pursue any recommended changes.
 - d. Study the health care coverage contract bidding and renewal process.
 - e. Receive reports regarding the impact of federal law on the health care coverage and the impact federal law may have on any proposed changes to the health care coverage.
 - f. Before each regular legislative session, receive from the public employees retirement system the executive budget proposals relating to the health care coverage for the upcoming biennium.
 - g. Consider and report on legislative proposals sponsored by the executive branch, judicial branch, and legislative management as provided under subsection 2.
 - h. Conduct studies as directed by the legislative assembly or the legislative management.
 - i. Report to the legislative management the committee's findings and recommendations, along with any legislation necessary to implement the committee's recommendations. During the interim, the committee may make multiple reports to the legislative management.
2. During the interim between regular legislative sessions, the committee may solicit draft legislative proposals from the executive branch, judicial branch, and legislative management. A legislative measure affecting the health care coverage may not be submitted by the executive branch, judicial branch, or legislative management for introduction in either house unless the measure is accompanied by a report from the committee. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether a legislative proposal affects the health care coverage.

- a. If the committee determines a legislative proposal affects the health care coverage, either actuarially or otherwise, the committee shall conduct a thorough review of the proposal and shall prepare a report with the committee's recommendation regarding the legislative proposal. The review may include an actuarial report or other report of a third party.
 - b. If a legislative proposal for which the committee conducts a review under this subsection is introduced for consideration by the legislative assembly, a copy of the related committee report must be appended to the copy of that measure referred to a standing committee.
3. To carry out the committee's responsibilities, the committee may:
- a. Through the legislative management, enter a contract with an actuary or actuarial firm or other expert for expert assistance and consultation. The committee shall notify the public employees retirement system of a contract entered under this subsection and, without need for a prior appropriation, the public employees retirement system shall pay the cost of the third-party assistance provided under the contract.
 - b. Direct the public employees retirement system to provide the committee with an actuarial report or other analysis. Without the need for a prior appropriation, the public employees retirement system shall pay the cost of the report or analysis.
 - c. Call on personnel from state agencies or political subdivisions to furnish the information and render the assistance the committee may from time to time request.
 - d. Establish rules for operation of the committee, including the submission and review of legislative proposals and the establishing of standards for actuarial review.
4. During a legislative session, if a standing committee takes action on a legislative measure sponsored by a legislator or recommends an amendment to a legislative measure which would affect the health care coverage, the standing committee shall consider the impact, actuarially or otherwise, of the amendment or measure and may request the public employees retirement system provide an actuarial report or other analysis of the impact of the measure or amendments. If the public employees retirement system provides an analysis or other report under this subsection, the public employees retirement system may pay for the analysis or other report in the same manner as provided under subdivision b of subsection 3.
5. Upon receipt of findings and recommendations of the committee, the legislative management may make recommendations to the retirement board and the public employees retirement system.
6. This section does not require the retirement board or the public employees retirement system to disclose to the committee confidential or exempt information or records. However, upon request of the committee, the retirement board or public employees retirement system shall provide the committee with aggregate information as appropriate.

7. As used in this section, the term "health care coverage" means a uniform group insurance plan for hospital, medical, or prescription drug benefits coverage for an eligible employee which is provided under section 54-52.1-02.

SECTION 11. A new subsection to section 54-52-04 of the North Dakota Century Code is created and enacted as follows:

The board shall establish policies and implement procedures to make and collect payments in the most cost-effective manner, including the use of electronic transfer of funds.

SECTION 12. AMENDMENT. Section 54-52.1-08.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-08.2. Uniform group insurance program - Compliance with federal requirements - Group purchasing arrangements.

If the board determines that ~~any~~ a section or the phraseology of ~~any~~ a section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section to comply with the federal statutes or rules, subject to the approval of the legislative management's employee benefits programs committee. If the board seeks the approval of the employee benefits programs committee under this section, the board shall notify the public employee health care coverage committee. The board may assume responsibility for group purchasing arrangements as provided by federal law. ~~Any~~ A plan ~~modifications~~ modification made by the board under this section ~~are~~ is effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 13. EXPIRATION DATE. Section 8, 9, 10, and 12 of this Act are effective through July 31, 2019, and after that date are ineffective.

Approved May 2, 2017

Filed May 3, 2017

CHAPTER 23

HOUSE BILL NO. 1024

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

AN ACT to provide appropriations for defraying the expenses of various state departments and institutions; to provide a contingent appropriation; to amend and reenact section 4 of chapter 552 of the 2015 Session Laws, relating to Bank of North Dakota transfers to the state general fund; to provide for borrowing authority; to provide for transfers; to provide statements of legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - 2015-17 BIENNIUM. There is appropriated out of any moneys in the strategic investment and improvements fund, the sums as hereinafter provided or so much of the sums as may be necessary. These sums increase the special fund authority enacted by the sixty-fourth 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 with the effective date of this Act, and ending June 30, 2017, as follows:

Subdivision 1.

STATE TREASURER

Property tax relief credits	<u>\$8,100,000</u>
Total special funds	<u>\$8,100,000</u>

Subdivision 2.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Commission on legal counsel for indigents	<u>\$189,000</u>
Total special funds	<u>\$189,000</u>

Subdivision 3.

STATE DEPARTMENT OF HEALTH

Operating expenses	<u>\$250,000</u>
Total special funds	<u>\$250,000</u>

Subdivision 4.

DEPARTMENT OF HUMAN SERVICES

Grants - Medical assistance	<u>\$9,000,000</u>
Total special funds	<u>\$9,000,000</u>

Subdivision 5.

ADJUTANT GENERAL

Disaster costs	<u>\$79,500</u>
Total special funds	<u>\$79,500</u>

Subdivision 6.

STATE HISTORICAL SOCIETY

Litigation expenses	<u>\$50,000</u>
Total special funds	<u>\$50,000</u>

SECTION 1 TOTAL

Grand total special funds	<u>\$17,668,500</u>
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SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN PROCEEDS - THROUGH JUNE 30, 2019. There is appropriated from special funds received from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be necessary, to the agencies listed below for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019.

Subdivision 1.

ATTORNEY GENERAL

Salaries and wages	<u>\$200,000</u>
Total special funds	<u>\$200,000</u>

Subdivision 2.

JUDICIAL BRANCH

Pipeline protest trials	<u>\$1,500,000</u>
Total special funds	<u>\$1,500,000</u>

Subdivision 3.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Pipeline protest trials	<u>\$1,027,000</u>
Total special funds	<u>\$1,027,000</u>

Subdivision 4.

STATE DEPARTMENT OF HEALTH

Operating expenses	<u>\$1,420,000</u>
Total special funds	<u>\$1,420,000</u>

Subdivision 5.

HIGHWAY PATROL

Field operations	<u>\$3,234,000</u>
Total special funds	<u>\$3,234,000</u>

Subdivision 6.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Adult services	<u>\$500,000</u>
Total special funds	\$500,000

Subdivision 7.

GAME AND FISH DEPARTMENT

Salaries and wages	\$221,795
Operating expenses	<u>201,929</u>
Total special funds	\$423,724

Subdivision 8.

PARKS AND RECREATION DEPARTMENT

Natural resources	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 9.

DEPARTMENT OF TRANSPORTATION

Salaries and wages	\$287,000
Operating expenses	<u>422,000</u>
Total special funds	\$709,000

SECTION 2 TOTAL

Grand total special funds	\$9,213,724
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SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019 - ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST. The office of the adjutant general may borrow the sum of \$10,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from the federal government related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline.

SECTION 4. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ATTORNEY GENERAL - THROUGH JUNE 30, 2019. There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$15,872,000, or so much of the sum as may be necessary, to the attorney general for the purpose of providing any court-ordered payments to a bankruptcy estate or payments to be made pursuant to the terms of a settlement agreement approved by

order of the court, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section may be expended only upon an order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota* or pursuant to the terms of a settlement agreement approved by order of the court. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

SECTION 5. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM. The office of management and budget shall transfer the sum of \$155,000,000 from the strategic investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

SECTION 6. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.
2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

SECTION 7. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS. It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in section 3 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the legislative assembly that provisions of section 54-16-13 apply to the loans, except that emergency commission approval does not apply.

SECTION 8. LEGISLATIVE INTENT - COST REIMBURSEMENT - LOAN REPAYMENTS. It is the intent of the sixty-fifth legislative assembly that:

1. The department of emergency services and the governor accept reimbursement in the form of land, cash, or other assets from nonstate sources for state costs incurred relating to unlawful activity associated with the construction of the Dakota access pipeline.
2. Any reimbursements received be used to repay the Bank of North Dakota loans authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in section 3 of this Act, which were all obtained to provide the

funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline.

3. If the department of emergency services or the governor receive land or other noncash assets as reimbursement, the department of emergency services or the governor request authorization from the sixty-sixth legislative assembly to convey the land or noncash assets and use any proceeds for repayment of any remaining outstanding loans.

SECTION 9. AMENDMENT. Section 4 of chapter 552 of the 2015 Session Laws is amended and reenacted as follows:

SECTION 4. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND. ~~If, during~~ During the period beginning with the effective date of this Act and ending June 30, 2017, ~~the director of the office of management and budget determines the state general fund will not have a projected positive June 30, 2017, balance,~~ the industrial commission shall transfer \$100,000,000, ~~or so much of the sum as may be necessary,~~ from the earnings and accumulated and undivided profits of the Bank of North Dakota to the state general fund. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. ~~The sum of the amounts transferred may not exceed the lesser of \$100,000,000 or the amount necessary to provide for a positive June 30, 2017, general fund balance.~~

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 2017

Filed May 1, 2017

CHAPTER 24

HOUSE BILL NO. 1038

(Legislative Management)
(Human Services Committee)

AN ACT to provide an appropriation to the department of human services; to provide for the establishment of a caregiver resource center website; and to provide for a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES - LIFESPAN RESPITE CARE PROGRAM. There is appropriated from special funds derived from federal funds and other income, the sum of \$200,000, or so much of the sum as may be necessary, to the department of human services for the purpose of administering a lifespan respite care program, including public information about the program, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 2. DEPARTMENT OF HUMAN SERVICES - CAREGIVER RESOURCE CENTER WEBSITE. The department of human services shall establish and promote a caregiver resource center website for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 3. DEPARTMENT OF HUMAN SERVICES - LONG-TERM CARE SERVICES - REPORT TO LEGISLATIVE MANAGEMENT. The department of human services shall review services and related funding provided within its long-term care division for the 2015-17 and 2017-19 bienniums. The department of human services shall report to the legislative management during the 2017-18 interim on the levels of funding provided for and spent on nursing home services and home- and community-based services by program during these time periods and shall provide recommendations on options to increase the number and level of services and funding provided for home- and community-based services for the 2019-21 biennium.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 25**HOUSE BILL NO. 1419**

(Representatives Mock, D. Anderson, Headland, Johnston)
(Senators Oban, Unruh)

AN ACT to provide an appropriation for a shooting sports grant program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - GAME AND FISH SHOOTING SPORTS GRANT PROGRAM. There is appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the game and fish department for the purpose of establishing and administering a shooting sports grant program, for the biennium beginning July 1, 2017, and ending June 30, 2019. The director of the game and fish department may establish a shooting sports grant program, which may be made available to schools, clubs, and organized youth groups in the state. The funds appropriated under this section may be used to provide grants to promote and facilitate shooting sports in schools, clubs, and organized youth groups in the state.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 26**SENATE BILL NO. 2001**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the legislative branch of state government; to provide for applications, transfers, and cancellation of unexpended appropriations; to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the creation of a legislative revenue advisory committee; 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 the insurance regulatory trust fund, not otherwise appropriated, to the legislative branch of state government for the purpose of defraying the expenses of the legislative branch of state government, for the fiscal period beginning with the effective date of this Act and ending June 30, 2019, as follows:

Subdivision 1.

SIXTY-FIFTH AND SIXTY-SIXTH LEGISLATIVE ASSEMBLIES AND BIENNIUM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$10,004,373	\$229,051	\$10,233,424
Operating expenses	3,467,629	226,962	3,694,591
Capital assets	16,800	(10,800)	6,000
National conference of state legislatures	<u>241,263</u>	<u>(16,108)</u>	<u>225,155</u>
Total general fund	\$13,730,065	\$429,105	\$14,159,170

Subdivision 2.

LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,180,442	(\$130,912)	\$9,049,530
Operating expenses	2,837,968	73,640	2,911,608
Total all funds	\$12,018,410	(\$57,272)	\$11,961,138
Less estimated income	<u>70,000</u>	<u>0</u>	<u>70,000</u>
Total general fund	\$11,948,410	(\$57,272)	\$11,891,138
Full-time equivalent positions	37.00	(1.00)	36.00

Subdivision 3.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$25,678,475	\$371,833	\$26,050,308
Grand total special funds	<u>70,000</u>	<u>0</u>	<u>70,000</u>
Grand total all funds	\$25,748,475	\$371,833	\$26,120,308

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in subdivisions 1 and 2 of section 1 of this Act include funding from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month. Total funding provided from the general fund is as follows:

Legislative assembly	\$353,769
Legislative council	<u>95,568</u>
Total	\$449,337

SECTION 3. LEGISLATIVE ASSEMBLY ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Judicial wing meeting rooms	\$160,000	\$0
Information technology equipment	603,050	0
LEGEND maintenance	191,760	0
Council of State Governments conference	<u>160,000</u>	<u>0</u>
Total general fund	\$1,114,810	\$0

SECTION 4. LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Office equipment replacement	\$30,000	\$0
Office improvements	50,000	0
Oil and gas tax study	395,000	0
Information technology equipment	<u>135,460</u>	<u>0</u>
Total general fund	\$610,460	\$0

SECTION 5. 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 director of the legislative council upon the finding by the chairman or the director that the nature of studies and duties assigned to the legislative management or legislative council requires the transfers in properly carrying on the legislative management's and legislative council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the sixty-fifth and sixty-sixth legislative assemblies, upon request by the chairman of the legislative management or the director of the legislative council upon the finding by the chairman or director that the transfers are required for the legislative assembly to carry on its functions and duties.

SECTION 6. APPLICATION, TRANSFER AUTHORITY, AND CANCELLATION OF UNEXPENDED APPROPRIATIONS. Sections 54-16-04 and 54-44.1-11 do not apply to chapter 1 of the 2015 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 director of the legislative council. The office of management and budget shall cancel unexpended appropriations for the legislative assembly and legislative council enacted prior to the 2015-17 biennium as directed by the chairman of the legislative management or the director of the legislative council.

SECTION 7. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Legislative revenue advisory committee.

1. The legislative management, during each biennium, shall appoint a legislative revenue advisory committee. The committee must consist of the majority and minority leaders of the house and senate, the chairs of the house and senate appropriations committees, one member appointed by the house majority leader, and one member appointed by the senate majority leader. The legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedures governing the operation of other legislative management interim committees. The committee may contract with economic forecasting entities to provide economic data specific to North Dakota for state revenue forecasting purposes.
2. The committee shall monitor state revenues and state economic activity, review economic forecasting data and models, review and analyze executive revenue forecasts and alternative revenue forecasts, and conduct other assigned studies.
3. The committee shall review and assess agency revenues, including an assessment of the delivery and cost of services, staffing, and billing processes, to identify improvements to the efficiency and effectiveness of the services that will result in reduced costs for state agencies.
4. The committee shall consider input from representatives of the office of management and budget, office of the tax commissioner, industrial commission, other state agencies, and private sector entities.
5. The committee shall report its findings and recommendations to the legislative management for use in establishing the state revenue forecast.

SECTION 8. LEGISLATIVE MANAGEMENT STUDY - INFORMATION TECHNOLOGY DEPARTMENT SERVICES AND COSTS. During the 2017-18 interim, the legislative management shall consider studying the delivery and cost of the information technology department's services provided to state agencies. The study must include a review of the department's cost of services, staffing, and billing processes and must identify improvements to the efficiency and effectiveness of the department's services that will result in reduced costs for state agencies. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 9. LEGISLATIVE MANAGEMENT STUDY - STATE FLEET SERVICES AND COSTS. During the 2017-18 interim, the legislative management shall consider studying the delivery and cost of the department of transportation's state fleet services for state agencies. The study must include a review of the department's cost of services, staffing, and billing processes and identify improvements to the efficiency

and effectiveness of the state fleet services that will result in reduced costs for state agencies. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 1, 2017

Filed May 3, 2017

CHAPTER 27**SENATE BILL NO. 2002**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; to provide a transfer; 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 judicial branch for the purpose of defraying the expenses of the judicial branch for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

SUPREME COURT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,059,109	(\$149,997)	\$10,909,112
Operating expenses	2,483,980	247,602	2,731,582
Judges' retirement	79,588	1,176	80,764
Guardianship monitoring program	<u>228,789</u>	<u>87,415</u>	<u>316,204</u>
Total general fund	\$13,851,466	\$186,196	\$14,037,662

Subdivision 2.

DISTRICT COURTS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$68,669,330	(\$1,066,702)	\$67,602,628
Operating expenses	19,930,733	950,474	20,881,207
Judges' retirement	343,649	(359)	343,290
University of North Dakota central legal research	<u>80,000</u>	<u>(40,000)</u>	<u>40,000</u>
Total all funds	\$89,023,712	(\$156,587)	\$88,867,125
Less estimated income	<u>1,922,150</u>	<u>(583,012)</u>	<u>1,339,138</u>
Total general fund	\$87,101,562	\$426,425	\$87,527,987

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	\$1,082,762	<u>\$92,060</u>	<u>\$1,174,822</u>
Total all funds	\$1,082,762	\$92,060	\$1,174,822
Less estimated income	<u>444,656</u>	<u>38,045</u>	<u>482,701</u>
Total general fund	\$638,106	\$54,015	\$692,121

Subdivision 4.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$101,591,134	\$666,636	\$102,257,770
Grand total special funds	<u>2,366,806</u>	<u>(544,967)</u>	<u>1,821,839</u>
Grand total all funds	\$103,957,940	\$121,669	\$104,079,609
Full-time equivalent positions	391.00	(35.50)	355.50

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$950,356 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Information technology equipment	\$623,460	\$0
Disaster recovery project	1,825,000	0
Criminal eFile initiation	99,000	0
Facility space expansion	<u>1,115,070</u>	<u>0</u>
Total general fund	\$3,662,530	\$0

SECTION 4. APPROPRIATION. There are appropriated any funds received by the supreme court, district courts, and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in the federal acts or private gifts, grants, and donations for the period beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. 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 6. UNIVERSITY OF NORTH DAKOTA CENTRAL LEGAL RESEARCH - MATCHING FUND REQUIREMENT. Subdivision 2 of section 1 of this Act includes \$40,000 from the general fund for university of North Dakota central legal research, which may not be spent until the chief justice of the supreme court certifies to the office of management and budget that \$40,000 in matching funds from nonstate sources have been provided to the university of North Dakota for central legal research.

SECTION 7. LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying fees charged by the judicial branch, including fees charged by the clerk of district court under section 27-05.2-03. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 28**SENATE BILL NO. 2003**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to create and enact two new sections to chapter 15-10 and a new section to chapter 54-12 of the North Dakota Century Code, relating to approval of capital projects requested by institutions under the control of the state board of higher education, the nickel trophy, and tuition and fee waivers for law enforcement officers; and to amend and reenact sections 15-10-48, 15-10-49, 15-18.2-05, 15-18.2-06, 54-10-22.1, and 54-44.1-11 of the North Dakota Century Code, relating to matching grants for institutions under the control of the state board of higher education, state aid to institutions, the minimum amount payable through the higher education funding formula, protecting donor records from audits of university and college foundations, and the cancellation of unexpended appropriations; to repeal chapter 15-10.2 of the North Dakota Century Code, relating to the midwestern higher education compact; to provide for the transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to provide exemptions; to provide for the reallocation of oil and gas tax distributions; to authorize the conveyance of real property owned by the state of North Dakota; to provide for studies; to provide for legislative management reports; to provide legislative intent; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state board of higher education and to the entities and institutions under the supervision of the board, for the purpose of defraying the expenses of the state board of higher education and the entities and institutions under the control of the board, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets - bond payments	\$6,901,461	(\$296,135)	\$6,605,326
Competitive research programs	6,588,225	(560,475)	6,027,750
System governance	7,212,636	1,180,602	8,393,238
Title II	1,006,472	0	1,006,472
Core technology services	41,325,593	20,201,754	61,527,347
Student financial assistance grants	23,886,160	(1,968,854)	21,917,306
Professional student exchange program	3,941,754	(242,412)	3,699,342
Academic and technical education scholarship	13,134,096	(1,117,347)	12,016,749

Two-year campus marketing	747,600	(747,600)	0
Scholars program	2,113,584	(306,469)	1,807,115
Native American scholarship	649,267	(93,944)	555,323
Tribally controlled community college grants	967,250	(367,250)	600,000
Education incentive programs	3,349,000	(485,607)	2,863,393
Student mental health	308,100	(23,700)	284,400
Veterans' assistance grants	325,000	(47,125)	277,875
Commendation grants	4,486	(4,486)	0
Internal audit pool	280,350	(280,350)	0
Shared campus services	0	500,000	500,000
Two-year campus study	0	40,000	40,000
Education challenge grants	0	2,000,000	2,000,000
Total all funds	\$112,741,034	\$17,380,602	\$130,121,636
Less estimated income	<u>2,511,216</u>	<u>23,700,890</u>	<u>26,212,106</u>
Total general fund	\$110,229,818	(\$6,320,288)	\$103,909,530
Full-time equivalent positions	104.39	45.01	149.40

Subdivision 2.

BISMARCK STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$34,214,004	\$67,580,404	\$101,794,408
Capital assets	67,732	1,854,829	1,922,561
Total all funds	\$34,281,736	\$69,435,233	\$103,716,969
Less estimated income	0	72,991,998	72,991,998
Total general fund	\$34,281,736	(\$3,556,765)	\$30,724,971
Full-time equivalent positions	133.53	224.82	358.35

Subdivision 3.

LAKE REGION STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$14,143,353	\$22,356,652	\$36,500,005
Capital assets	0	362,667	362,667
Total all funds	\$14,143,353	\$22,719,319	\$36,862,672
Less estimated income	0	24,111,092	24,111,092
Total general fund	\$14,143,353	(\$1,391,773)	\$12,751,580
Full-time equivalent positions	50.19	79.42	129.61

Subdivision 4.

WILLISTON STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$9,191,151	\$17,797,826	\$26,988,977
Capital assets	197,801	1,064,167	1,261,968
Total all funds	\$9,388,952	\$18,861,993	\$28,250,945
Less estimated income	0	19,855,598	19,855,598
Total general fund	\$9,388,952	(\$993,605)	\$8,395,347
Full-time equivalent positions	49.96	50.79	100.75

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$146,572,961	\$712,782,489	\$859,355,450
Capital assets	<u>4,411,566</u>	<u>91,000,000</u>	<u>95,411,566</u>
Total all funds	\$150,984,527	\$803,782,489	\$954,767,016
Less estimated income	<u>0</u>	<u>819,870,450</u>	<u>819,870,450</u>
Total general fund	\$150,984,527	(\$16,087,961)	\$134,896,566
Full-time equivalent positions	630.20	1,587.87	2,218.07

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$144,323,680	\$588,884,780	\$733,208,460
Capital assets	<u>2,732,244</u>	<u>82,571,860</u>	<u>85,304,104</u>
Total all funds	\$147,055,924	\$671,456,640	\$818,512,564
Less estimated income	<u>0</u>	<u>689,386,329</u>	<u>689,386,329</u>
Total general fund	\$147,055,924	(\$17,929,689)	\$129,126,235
Full-time equivalent positions	537.10	1,358.56	1,895.66

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$40,916,239	\$50,918,458	\$91,834,697
Capital assets	<u>0</u>	<u>1,012,379</u>	<u>1,012,379</u>
Total all funds	\$40,916,239	\$51,930,837	\$92,847,076
Less estimated income	<u>0</u>	<u>57,605,613</u>	<u>57,605,613</u>
Total general fund	\$40,916,239	(\$5,674,776)	\$35,241,463
Full-time equivalent positions	168.30	176.74	345.04

Subdivision 8.

DICKINSON STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$24,527,233	\$22,608,359	\$47,135,592
Capital assets	<u>0</u>	<u>409,078</u>	<u>409,078</u>
One-time operations and debt repayment	<u>0</u>	<u>7,409,626</u>	<u>7,409,626</u>
Total all funds	\$24,527,233	\$30,427,063	\$54,954,296
Less estimated income	<u>0</u>	<u>29,737,827</u>	<u>29,737,827</u>
Total general fund	\$24,527,233	\$689,236	\$25,216,469
Full-time equivalent positions	120.26	48.64	168.90

Subdivision 9.

MAYVILLE STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$15,642,731	\$28,611,943	\$44,254,674
Capital assets	0	358,992	358,992
Total all funds	\$15,642,731	\$28,970,935	\$44,613,666
Less estimated income	0	30,307,148	30,307,148
Total general fund	\$15,642,731	(\$1,336,213)	\$14,306,518
Full-time equivalent positions	66.23	144.30	210.53

Subdivision 10.

MINOT STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$45,037,266	\$55,838,786	\$100,876,052
Capital assets	499,620	600,000	1,099,620
Total all funds	\$45,536,886	\$56,438,786	\$101,975,672
Less estimated income	0	62,058,916	62,058,916
Total general fund	\$45,536,886	(\$5,620,130)	\$39,916,756
Full-time equivalent positions	204.10	237.55	441.65

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$23,218,126	\$25,312,806	\$48,530,932
Capital assets	0	455,823	455,823
Total all funds	\$23,218,126	\$25,768,629	\$48,986,755
Less estimated income	0	28,470,657	28,470,657
Total general fund	\$23,218,126	(\$2,702,028)	\$20,516,098
Full-time equivalent positions	105.59	97.16	202.75

Subdivision 12.

DAKOTA COLLEGE AT BOTTINEAU

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$8,017,920	\$9,179,785	\$17,197,705
Capital assets	86,537	27,470	114,007
Total all funds	\$8,104,457	\$9,207,255	\$17,311,712
Less estimated income	0	9,629,173	9,629,173
Total general fund	\$8,104,457	(\$421,918)	\$7,682,539
Full-time equivalent positions	46.96	37.34	84.30

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	\$53,166,247	\$158,723,654	\$211,889,901
Total all funds	\$53,166,247	\$158,723,654	\$211,889,901

Less estimated income	<u>0</u>	<u>154,078,620</u>	<u>154,078,620</u>
Total general fund	\$53,166,247	\$4,645,034	\$57,811,281
Full-time equivalent positions	184.58	251.17	435.75

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$6,228,620	\$8,729,827	\$14,958,447
Capital assets	<u>101,210</u>	<u>17,518</u>	<u>118,728</u>
Total all funds	\$6,329,830	\$8,747,345	\$15,077,175
Less estimated income	<u>1,650,000</u>	<u>9,000,748</u>	<u>10,650,748</u>
Total general fund	\$4,679,830	(\$253,403)	\$4,426,427
Full-time equivalent positions	28.96	(1.96)	27.00

Subdivision 15.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$681,876,059	(\$56,954,279)	\$624,921,780
Grand total special funds	<u>4,161,216</u>	<u>2,030,805,059</u>	<u>2,034,966,275</u>
Grand total all funds	\$686,037,275	\$1,973,850,780	\$2,659,888,055

SECTION 2. HEALTH INSURANCE INCREASE. Section 1 of this Act includes the sum of \$17,991,140, of which \$5,638,788 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Capital projects - general funds	\$99,167,288	\$0
Capital projects - other funds	44,848,194	168,505,000
Campus security pool	2,763,562	0
Core technology services projects	2,821,500	0
Open education resource training	107,250	0
Theodore Roosevelt center	800,000	0
Williston state college energy development impact	2,500,000	0
Dickinson state university leadership transition	2,000,000	0
Museum of art deferred maintenance	760,000	0
Deferred maintenance pool	8,482,500	0
School of medicine and health sciences residency positions	4,700,000	0
Health care workforce initiative	13,814,806	0
Desktop support services	81,750	0
Email retention	350,000	0
Dickinson state university Woods Hall renovation	11,500,000	0
Education challenge grants	22,124,500	2,000,000
Institution operations distributions	0	2,000,000

Dickinson state university operations and debt repayment	0	7,409,626
Two-year campus study	0	40,000
Midwestern higher education compact dues	0	230,000
Total all funds	\$216,821,350	\$180,184,626
Total other funds	60,848,194	168,505,000
Total general fund	\$155,973,156	\$11,679,626

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The North Dakota university system shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium July 1, 2017, and ending June 30, 2019.

SECTION 4. AMENDMENT. Section 15-10-48 of the North Dakota Century Code is amended and reenacted as follows:

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

1. a. ~~During the period beginning July 1, 2015, and ending December 31, 2016~~Subject to legislative appropriations, each biennium during the period beginning July first of each odd-numbered year and ending December thirty-first of each even-numbered year, the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundations of the university of North Dakota and North Dakota state university for projects dedicated exclusively to the advancement of academics.
- b. To be eligible for a matching grant, an institution must demonstrate that:
 - (1) Its foundation has raised at least fifty thousand dollars in cash or monetary pledges for a qualifying project; and
 - (2) The project has been approved by the grant review committee established in section 15-10-51.
- c. The board may award up to ~~seven million~~two hundred thousand dollars in matching grants to each institution. ~~The first two million dollars in matching grants awarded to each institution must be used for student scholarships that comply with section 15-10-53.~~
- d. Projects at the university of North Dakota school of medicine and health sciences are not eligible to receive a grant under this section.
2. a. If any available dollars have not been awarded by the board before January 1, ~~2017~~first of each odd-numbered year, in accordance with subsection 1, either the university of North Dakota or North Dakota state university may apply for an additional matching grant.
- b. An application submitted under this subsection must meet the same criteria as an original application.
- c. The board shall consider each application submitted under this subsection in chronological order.

- d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
3. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with administrative expenses incurred in the grant review process.

SECTION 5. AMENDMENT. Section 15-10-49 of the North Dakota Century Code is amended and reenacted as follows:

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

1. a. ~~During the period beginning July 1, 2015, and ending December 31, 2016~~Subject to legislative appropriations, each biennium during the period beginning July first of each odd-numbered year and ending December thirty-first of each even-numbered year, the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundations of Bismarck state college, Dakota college at Bottineau, Dickinson state university, Lake Region state college, Mayville state university, Minot state university, North Dakota state college of science, Valley City state university, and Williston state college for projects dedicated exclusively to the advancement of academics.
- b. To be eligible for a matching grant, an institution must demonstrate that:
 - (1) Its foundation has raised at least twenty-five thousand dollars in cash or monetary pledges for a qualifying project; and
 - (2) The project has been approved by the grant review committee established in section 15-10-51.
- c. The board may award up to ~~one million~~two hundred thousand dollars in matching grants to each institution.
2. a. If any available dollars have not been awarded by the board before January 1, ~~2017~~first of each odd-numbered year, in accordance with subsection 1, any institution listed in subsection 1 may apply for an additional matching grant.
- b. An application submitted under this subsection must meet the same criteria as an original application.
- c. The board shall consider each application submitted under this subsection in chronological order.
- d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
3. a. ~~The board may award an additional five hundred thousand dollars in matching grants to institutions that have been awarded one million dollars in matching grants under subsection 1 and apply for an additional matching grant.~~

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

SECTION 6. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Capital project and capital lease requests - Maintenance reserve account.

1. Notwithstanding any existing agreements, an institution under the control of the state board of higher education shall obtain approval from the legislative assembly before the institution acquires any additional facility space to be used by the institution for any purpose, if the acquisition would result in additional operating costs funded from any source. This subsection does not apply to operating lease agreements that preclude the ownership of the leased facility.
2. Notwithstanding any existing agreements, an institution under the control of the state board of higher education shall obtain approval from the legislative assembly before an institution purchases, rents, occupies, or otherwise utilizes a building or any portion of a building for a purpose that directly or indirectly supports or relates to the institution's educational or administrative functions if the building is located more than ten miles from the campus of the institution. This subsection does not apply to buildings utilized by an institution to offer dual-credit courses, buildings utilized by the agricultural experiment station and research extension centers, and buildings utilized by the North Dakota state university extension service. For purposes of this section, "campus" means the campus of the institution under the Federal Clery Act [Pub. L. 105-244; 20 U.S.C. 1092(f)].
3. An institution under the control of the state board of higher education may undertake a facility renovation project only if the project will reduce the deferred maintenance amount of the facility by no less than seventy five percent of the total cost of the renovation. The institution shall maintain documentation that demonstrates the cost and scope of the deferred maintenance reduction that results directly from the renovation. This subsection does not apply to projects undertaken solely to correct building code deficiencies or to installations of infrastructure determined by the board to be essential to the mission of the institution.
4. Facility construction and renovation projects undertaken by an institution under the control of the state board of higher education must conform to campus master plan and space utilization requirements approved by the state board of higher education.

5. An institution that obtains legislative approval under subsection 1 must establish a maintenance reserve fund of three percent of the total construction cost or replacement value, whichever is greater, of the acquired space. The institution's plans for funding the maintenance reserve fund must be included in the request for legislative approval under subsection 1. Maintenance reserve funds must be deposited in an account under the control of the state board of higher education before the acquired space may be occupied, and the funds may be used for maintenance repairs after the total deferred maintenance of the space exceeds thirty percent of its replacement value. The funds may not be used for any other purpose. This subsection does not apply to additional space acquired through the sale of revenue bonds that require by covenant the establishment of maintenance reserve funds.

SECTION 7. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Nickel trophy.

To promote national recognition and statewide enthusiasm, the legislative assembly encourages the university of North Dakota and the North Dakota state university of agriculture and applied science to play for the nickel trophy during the course of a national collegiate athletic association football game. If the athletic director or president of either institution elects not to play for the nickel trophy, the nickel trophy must be permanently displayed in the heritage center.

SECTION 8. AMENDMENT. Section 15-18.2-05 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as provided under subsection 2, in order to determine the state aid payment to which each institution under its control is entitled, the state board of higher education shall multiply the product determined under section 15-18.2-04 by a base amount of:
 1. ~~\$72.63~~\$58.65 in the case of North Dakota state university and the university of North Dakota;
 2. ~~\$107.33~~\$86.95 in the case of Dickinson state university, Mayville state university, Minot state university, and Valley City state university; and
 3. ~~\$114.88~~\$93.03 in the case of Bismarck state college, Dakota college at Bottineau, Lake Region state college, North Dakota state college of science, and Williston state college.
2. An institution is entitled to an amount equal to seventy-five percent of the product determined under subsection 1 for credits completed by students receiving a tuition waiver pursuant to section 11 of this Act.

SECTION 9. AMENDMENT. Section 15-18.2-06 of the North Dakota Century Code is amended and reenacted as follows:

15-18.2-06. (Effective through June 30, 20172019) Base funding - Minimum amount payable.

Notwithstanding any calculations required by this chapter, during each fiscal year, beginning with 2014-15biennium, an institution may not receive less than ninety-six

percent of the state aid to which the institution was entitled under this chapter during the previous fiscal-yearbiennium.

SECTION 10. AMENDMENT. Section 54-10-22.1 of the North Dakota Century Code is amended and reenacted as follows:

54-10-22.1. State auditor's access to information relating to operations of governmental entities subject to audit.

Notwithstanding any other specific sections of law, the state auditor and persons employed by the state auditor, when necessary in conducting an audit, shall have access to all information relating to operations of all governmental units or component units subject to audit except active investigatory work product of the attorney general as defined in section 44-04-19.1 and financial records and estate planning records a donor provides to a nonprofit organization affiliated with an institution under the control of the state board of higher education which provides support to and is organized and operated for the benefit of the institution. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as described in section 54-10-24, the state auditor may inspect any state agency's books, papers, accounts, or records that may be relevant to an ongoing audit of any other state agency or computer system audit. The state auditor and persons employed by the state auditor examining any information, which is confidential by law, shall guard the secrecy of such information except when otherwise directed by judicial order or as is otherwise provided by law.

SECTION 11. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Law enforcement officer tuition and fees waiver.

1. To the extent the annual cap under this section has not been met, an individual who is employed as a full-time law enforcement officer in this state, who has a minimum of two years of employment, and who is licensed under chapter 12-63, is entitled to a waiver of twenty-five percent of resident tuition and fees of any institution of higher education under the control of the state board of higher education if the law enforcement officer:
 - a. Maintains satisfactory performance with the officer's law enforcement agency;
 - b. Obtains authorization to participate in the waiver program and a certificate of verification from the law enforcement officer's superior officer which attests to the officer's satisfactory performance;
 - c. Meets all admission requirements of the institution; and
 - d. Pursues studies leading to a degree from an associate degree program or a baccalaureate degree program.
2. The law enforcement officer may receive the waiver for up to five years from the date the law enforcement officer first receives a waiver under this section.
3. The institution of higher education shall waive twenty-five percent of the officer's tuition and fees after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible law enforcement officer during the time the officer is enrolled. To remain eligible for the waiver, the

officer shall comply with all requirements of the institution for continued attendance and award of an associate degree or a baccalaureate degree.

4. The law enforcement officer shall include the certificate of verification when applying for enrollment to the institution of higher education.
5. The total amount of waivers granted each academic year by institutions under the control of the state board of higher education may not exceed five hundred thousand dollars.
6. The attorney general shall adopt the rules necessary to implement this section.

SECTION 12. 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, 20172019) 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, 20172019) Office of management and budget to cancel unexpended appropriations - When they may continue. The office of

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

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

SECTION 13. REPEAL. Chapter 15-10.2 of the North Dakota Century Code is repealed.

SECTION 14. ADDITIONAL FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION. All funds, in addition to those appropriated in section 1 of this Act, from federal, private, and other sources for competitive grants or other funds that the legislative assembly has not indicated the intent to reject, including tuition revenue, received by the state board of higher education and the institutions and entities under the control of the state board of higher education, are appropriated to the board and those institutions and entities, for the biennium beginning July 1, 2017, and ending June 30, 2019. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2017, and ending June 30, 2019, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board.

SECTION 15. CAMPUS CAPITAL PROJECTS - PROJECT MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, each capital project authorized by the state board of higher education must have adequate project management oversight by either an institution official or a representative of an external entity. An institution may seek assistance from the North Dakota university system office for project management oversight of a capital project.

SECTION 16. STUDENT LOAN TRUST FUND - LEGISLATIVE INTENT. Subdivision 1 of section 1 of this Act includes the sum of \$1,504,744, 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, \$500,000 is for grants to tribally

controlled community colleges, and \$539,437 is for connectND campus solution positions, for the biennium beginning July 1, 2017, and ending June 30, 2019.

Subdivision 13 of section 1 of this Act includes the sum of \$13,806,856, or so much of the sum as may be necessary, from the student loan trust fund for residency positions at the university of North Dakota school of medicine and health sciences, for the biennium beginning July 1, 2017, and ending June 30, 2019. It is the intent of the sixty-fifth legislative assembly that funding for the residency positions becomes part of ongoing base funding in future budget requests of the school.

SECTION 17. STATEWIDE MEMBERSHIP DUES. Subdivision 1 of section 1 of this Act includes the sum of \$294,000 for membership dues for the western interstate commission for higher education. Subdivision 1 of section 1 of this Act includes the sum of \$230,000 of one-time funding for membership dues of the midwestern higher education compact.

SECTION 18. DICKINSON STATE UNIVERSITY - USES OF FUNDS.

1. The one-time operations and debt repayment line item included in subdivision 8 of section 1 of this Act includes the sum of \$7,409,626, or so much of the sum as may be necessary, which must be used by Dickinson state university as follows:
 - a. \$3,100,000 must be used to repay any outstanding debt of the Biesiot activities center. The funds provided under this subdivision may be used only if the funding provided under this subdivision will result in final satisfaction of any debt associated with the facility; and
 - b. \$4,309,626 must be used for the operations of the institution.
2. Dickinson state university shall utilize up to \$2,000,000 of funding from campus reserves for any additional funding needed to maintain the operations of the institution during the biennium beginning July 1, 2017, and ending June 30, 2019.
3. Dickinson state university may not discontinue any portion of its department of nursing academic program during the biennium beginning July 1, 2017, and ending June 30, 2019.
4. The appropriations identified under this section are considered one-time funding items.

SECTION 19. STATE TREASURER - REALLOCATION OF OIL AND GAS TAX DISTRIBUTIONS. Notwithstanding any other provision of law, during the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall withhold fifty percent of the amounts allocated to the city of Dickinson under subdivision a of subsection 1 of section 57-51-15, up to a maximum of \$2,500,000 of withholdings, and shall deposit the amounts withheld in the state general fund.

Notwithstanding any other provision of law, during the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall withhold fifty percent of the amounts allocated to Stark County under subdivision a of subsection 5 of section 57-51-15, up to a maximum of \$375,000 of withholdings, and shall deposit the amounts withheld in the state general fund.

SECTION 20. TRANSFER AUTHORITY - LEGISLATIVE MANAGEMENT REPORT. Notwithstanding section 54-16-04, the state board of higher education may

transfer appropriation authority from the operations to the capital assets line items within subdivisions 2 through 14 of section 1 of this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The board shall report any transfer of funds under this section to the office of management and budget and the legislative management.

SECTION 21. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.

Notwithstanding any other provisions of law, the state board of higher education may adjust full-time equivalent positions as needed, subject to the availability of funds, for institutions and entities under its control during the biennium beginning July 1, 2017, and ending June 30, 2019. The North Dakota university system shall report any adjustments to the office of management and budget as part of the submission of the 2019-21 biennium budget request.

SECTION 22. UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES OPERATIONS.

The operations line item in subdivision 5 of section 1 of this Act includes a funding allocation from the higher education per student credit-hour funding formula attributable to inflation during the biennium beginning July 1, 2017, and ending June 30, 2019. Based on the recommendation of the commissioner of higher education, a portion of the allocation must be transferred by the state board of higher education to the university of North Dakota school of medicine and health sciences.

SECTION 23. BOND ISSUANCE AUTHORIZATION - PURPOSES.

The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of projects authorized in this section, declared to be in the public interest, through the issuance of self-liquidating, tax-exempt evidences of indebtedness under chapter 15-55, beginning with the effective date of this section and ending June 30, 2019. Evidences of indebtedness issued pursuant to this section are not a general obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of indebtedness. The evidences of indebtedness may be issued and the proceeds are appropriated in section 1 of this Act for the following capital projects:

North Dakota state university - New residence hall	\$39,505,000
North Dakota state university - University village replacement	<u>10,000,000</u>
Total special funds	\$49,505,000

SECTION 24. EXEMPTION - THEODORE ROOSEVELT CENTER PROJECT.

Except as provided in this section, the amounts appropriated for the Theodore Roosevelt center project in section 3 of chapter 34 of the 2013 Session Laws and section 4 of chapter 49 of the 2013 Session Laws are not subject to section 54-44.1-11 and any unexpended funds from these sections are available during the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

1. Of the unexpended appropriations available under this section, up to \$750,000 may be used for the operations of the Theodore Roosevelt presidential library. Any remaining funds may be used only for the planning, design, and construction of the Theodore Roosevelt presidential library building and may not be used for operations, exhibits, or replica structures.
2. Any expenditure of funds continued under this section, including funds used to match state funds, must be approved in advance by an employee of the office of commissioner of higher education designated by the state board of higher education.

3. The director of the office of management and budget shall cancel any appropriation authority continued under this section on December 31, 2018, unless Dickinson state university has certified to the director that:
 - a. Construction commenced on the presidential library building prior to December 31, 2018;
 - b. A North Dakota architect was used to design the presidential library building;
 - c. The cost of constructing the building, including planning and design costs, will exceed fourteen million dollars; and
 - d. Except as provided in subsection 1, no state appropriated funds designated for the Theodore Roosevelt presidential library building project nor any funds used to match the state funding are being used for purposes other than for planning, design, and construction costs of the building.

SECTION 25. EXEMPTION - HIGHER EDUCATION CHALLENGE GRANTS - TRANSFER. The unexpended amount remaining for the education challenge fund line item in section 1 of chapter 34 of the 2013 Session Laws is not subject to section 54-44.1-11 and the state board of higher education shall transfer any unexpended funds in this line item to Dickinson state university for the operations of the institution during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 26. EXEMPTION - STUDENT FINANCIAL ASSISTANCE GRANTS. Of the \$25,634,276 appropriated from the general fund in the student financial assistance grants line item in subdivision 1 of section 1 of chapter 3 of the 2015 Session Laws, \$5,000,000 is not subject to section 54-44.1-11 and must be canceled by the office of management and budget on the effective date of this section.

SECTION 27. TUITION RATE INCREASE LIMITATIONS - BUDGET SECTION APPROVAL.

1. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2017-18 academic year by more than four percent as compared to the tuition rate in effect during the 2017 spring semester unless the board receives prior budget section approval.
2. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2018-19 academic year by more than four percent as compared to the tuition rate in effect during the 2018 spring semester unless the board receives prior budget section approval.
3. This section does not apply to tuition rates charged for graduate level programs, including programs offered through the university of North Dakota school of medicine and health sciences, the university of North Dakota school of law, or the North Dakota state university school of pharmacy.
4. This section does not apply to tuition rates for nonresident students attending institutions of higher education under the control of the state board of higher

education. For purposes of this section, the residency of students for tuition purposes must be determined under section 15-10-19.1.

5. This section does not apply to tuition rates determined under tuition reciprocity agreements entered into by the state board of higher education with other states or state education compacts.
6. For purposes of this section, an institution must calculate a resident tuition rate increase based on the tuition rate paid by an average full-time resident student. The state board of higher education may exclude adjustments to a tuition rate resulting from a change in an institution's method of charging tuition, including the consolidation of existing fees into tuition rates or charging tuition based on a per-credit rate, from tuition rate calculations under this section.

SECTION 28. USE OF EXTRAORDINARY REPAIRS FUNDING - MATCHING FUNDS. The capital assets line items in subdivisions 2 through 12 of section 1 of this Act include funding from the general fund for institution extraordinary repairs. An institution shall provide two dollars of matching funds from operations or other sources for each one dollar of extraordinary repairs funding used for a project.

SECTION 29. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, shall convey certain real property consisting of approximately 0.8 acres parallel and adjacent to the BNSF railway company right-of-way in Cass County, North Dakota, known as parcel number 01-3504-08500-000 in the records of Cass County, North Dakota, to BNSF railway company, if determined appropriate by the state board of higher education and the commissioner of university and school lands. The terms of the conveyance must be determined jointly by the state board of higher education or a designee of the board and the commissioner of university and school lands. North Dakota Century Code sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 30. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, may convey certain real property known as Dakota hall or airport addition, 1015 north forty-third street, lot h, replat of lot 1 and 2, b 3 block 3 and part northwest quarter of northwest quarter section 6-151-60 in the records of the city of Grand Forks, if determined appropriate by the state board of higher education. If any of the real property authorized to be conveyed under this section is conveyed, the terms of the conveyance must be determined jointly by the state board of higher education or a designee of the board and the commissioner of university and school lands. North Dakota Century Code sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 31. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, may convey certain real property known as Ray Richard's golf course or Ray Richard's golf course addition, 3801 demers avenue, lot 1, block 1, and Ray Richard's golf course addition, 3501 demers avenue, lot 2, block 1, in the records of the city of Grand Forks, if determined appropriate by the state board of higher education. If any of the real property authorized to be conveyed under this section is conveyed, the terms of the conveyance must be determined by the state board of higher education or a designee of the board. North Dakota Century Code sections 54-01-5.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 32. TRANSFER OF DAKOTA INSTITUTE INVENTORY. The parks and recreation department shall transfer the name Dakota institute and all rights, title, interests, and copyrights and up to eighty percent of any remaining inventory of any Dakota institute publication, book, or other document or production, regardless of format, to Bismarck state college. Bismarck state college may transfer any rights, title, interests, copyrights, inventory of any of the Dakota institute's publications, books, or other documents or productions, regardless of format, to the author or producer of the document or production.

SECTION 33. RESEARCH NETWORKS - REPORT TO THE LEGISLATIVE MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, the state board of higher education, in association with the research institutions under its control, shall consider opportunities for collaboration on high-performance computing, data analytics, and connectivity to Minnesota research networks to improve access, increase capacity, and create efficiencies. The board may utilize appropriations and reserves designated for the northern tier network to accommodate continued use of existing research networks and to expand network capabilities. The board shall consider developing policies and procedures to authorize private entities to utilize the research network. During the 2017-18 interim, the state board of higher education shall provide a report to the legislative management regarding the status of efforts to collaborate with Minnesota entities for research network purposes.

SECTION 34. LEGISLATIVE MANAGEMENT STUDY - UNIVERSITY OF NORTH DAKOTA ENERGY AND ENVIRONMENTAL RESEARCH CENTER RELATIONSHIP WITH THE UNIVERSITY OF NORTH DAKOTA. During the 2017-18 interim, the Legislative Management shall consider studying the relationship between the University of North Dakota and the Energy and Environmental Research Center. The study, if conducted, must include a review of the working relationship between the entities including financial responsibilities and expectations of each entity including potential alternative administrative reporting lines and business models. The Legislative Management shall report its findings and recommendations, including any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 35. STATE BOARD OF HIGHER EDUCATION - STUDY OF THE REORGANIZATION OF TWO-YEAR INSTITUTIONS - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. During the period beginning July 1, 2017, and ending December 31, 2018, the state board of higher education shall study the reorganization of the two-year institutions under its control into a community and technology college system that addresses workforce and education needs of the state. As part of the study, the board shall consider:

1. Shared administration;
2. Shared courses, including a common course catalog;
3. Articulation agreements linking elementary and secondary education, career academies, and career and technical education to postsecondary certificates and associate's degrees;
4. Centralized processing of student admissions, housing applications, financial aid, and advising; and
5. Centralized services, including bookstore operations, food services, marketing, procurement, accounting, and human resources.

The state board of higher education shall approve and present a plan to implement the recommendations of its study to reorganize two-year institutions, including drafts of legislation necessary to implement the recommendations, to the appropriations committees of the sixty-sixth legislative assembly.

SECTION 36. STATE BOARD OF HIGHER EDUCATION - STUDY OF NURSING PROGRAMS - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. During the period beginning July 1, 2017, and ending December 31, 2018, the state board of higher education shall study the reorganization of nursing programs at institutions under its control. As part of the study, the board shall review the number of institutions offering nursing programs, the level of programs offered, and the locations of programs. The board shall consider options to develop collaborations among institutions to offer programs in an efficient and effective manner to address the workforce needs of the state.

The state board of higher education shall approve and present a plan to implement the recommendations of its study to reorganize nursing programs, including drafts of legislation necessary to implement the recommendations, to the appropriations committees of the sixty-sixth legislative assembly.

SECTION 37. STATE BOARD OF HIGHER EDUCATION DATA AND REPORTING INCONSISTENCIES - REPORT TO LEGISLATIVE MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, the state board of higher education shall evaluate the following data and reporting inconsistency issues at institutions and entities under its control and develop policies and procedures to correct:

1. Inconsistent employee classifications and human resources reporting;
2. Inconsistent employee leave policies;
3. Inconsistent practices for awarding tuition waivers; and
4. Inconsistent practices regarding the charging of student fees.

The state board of higher education shall provide a report to and consult with the legislative management during the 2017-18 interim regarding the status of the inconsistencies, including policies and procedures being developed to address the inconsistencies.

SECTION 38. REDUCTION IN EMPLOYEES - LEGISLATIVE INTENT - REPORT TO LEGISLATIVE MANAGEMENT. It is the intent of the sixty-fifth legislative assembly that if the number of full-time equivalent positions is reduced at institutions under the control of the state board of higher education, any reduction be applied among all classifications of employees with emphasis on senior administrative positions. During the 2017-18 interim, the state board of higher education shall provide reports to the legislative management regarding the total number of employee positions reduced at each institution, the number of administrative positions reduced at each institution, and whether any former administrative staff employees are still employed by the institution in a different position.

SECTION 39. LEGISLATIVE INTENT - NORTH DAKOTA STATE UNIVERSITY - LEASE ARRANGEMENT AND OTHER SAVINGS. It is the intent of the sixty-fifth legislative assembly that future general fund appropriations in support of the North Dakota state university department of nursing program in Bismarck be adjusted for

savings resulting from facility lease negotiations and for credit-hours completed at the school.

SECTION 40. EFFECTIVE DATE. Section 13 of this Act become effective on June 30, 2017.

SECTION 41. EMERGENCY. Sections 13, 23, 24, 26, 28, and 40 and the capital assets line items in section 1 of this Act are declared to be an emergency measure.

Approved May 2, 2017

Filed May 3, 2017

NOTE: Section 6 of chapter 28, S.L. 2017, pertaining to capital project and capital lease requests was vetoed by the Governor. Chapter 450, S.L. 2017.

In letter opinion 2017-L-04, the Attorney General opined the Governor's veto of subsections 1, 2, and 5 of Section 6 of chapter 28, S.L. 2017 is authorized by law; and the Governor's veto of subsections 3 and 4 of Section 6 of chapter 28, S.L. 2017 is not authorized by the Constitution of North Dakota and is not effective.

A final determination on the validity of the Governor's veto of Section 6 of chapter 28, S.L. 2017 has not been made.

CHAPTER 29

SENATE BILL NO. 2004

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to amend and reenact sections 43-28.1-01 and 43-28.1-03 and subsection 1 of section 54-27-25 of the North Dakota Century Code, relating to the dentists loan repayment program, criteria to be used in selecting qualified dentists, and the tobacco settlement trust fund; to repeal chapter 23-38 of the North Dakota Century Code, relating to the community health grant program; to authorize transfers; to provide statements of legislative intent; to provide for a report to the legislative management; 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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$62,805,918	\$716,060	\$63,521,978
Operating expenses	40,598,335	(2,784,050)	37,814,285
Capital assets	2,895,232	551,508	3,446,740
Grants	57,096,760	2,787,181	59,883,941
Tobacco prevention	6,910,177	6,736,527	13,646,704
Women, infants, and children food payments	20,200,000	0	20,200,000
Medical marijuana	0	1,560,770	1,560,770
Total all funds	\$190,506,422	\$9,567,996	\$200,074,418
Less estimated income	<u>141,970,854</u>	<u>14,629,104</u>	<u>156,599,958</u>
Total general fund	\$48,535,568	(\$5,061,108)	\$43,474,460
Full-time equivalent positions	365.00	(1.00)	364.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item, tobacco prevention line item, and medical marijuana line item in section 1 of this Act include the sum of \$1,007,440, of which \$525,796 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Environmental equipment	\$780,000	\$0
Forensic examiner digital x-ray equipment	44,000	0

Women, infants, and children system upgrade	1,712,110	1,739,220
Medical marijuana	<u>0</u>	<u>95,066</u>
Total all funds	\$2,536,110	\$1,834,286
Less estimated income	<u>2,200,110</u>	<u>1,834,286</u>
Total general fund	\$336,000	\$0

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The state department of health shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the state department of health from the environment and rangeland protection fund, for the biennium beginning July 1, 2017, and ending June 30, 2019. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

SECTION 5. INSURANCE TAX DISTRIBUTION FUND. The estimated income line item included in section 1 of this Act includes \$1,250,000 from the insurance tax distribution fund for rural emergency medical services grants.

SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. The estimated income line item included in section 1 of this Act includes \$500,000 from the strategic investment and improvements fund for legal fees related to an environmental protection agency lawsuit.

SECTION 7. STUDENT LOAN TRUST FUND. The estimated income line item in section 1 of this Act includes \$360,000 from the student loan trust fund for dental loan repayment program grants.

SECTION 8. TOBACCO PREVENTION AND CONTROL TRUST FUND. The estimated income line item in section 1 of this Act includes \$12,878,195 from the tobacco prevention and control trust fund for tobacco prevention and related health programs.

SECTION 9. STATEMENT OF LEGISLATIVE INTENT - MEDICAL MARIJUANA. It is the intent of the sixty-fifth legislative assembly that chapter 19-24.1 of the North Dakota Century Code, as created in Senate Bill No. 2344, be treated as an amendment to initiated measure No. 5 as adopted at the general election in 2016, and therefore an amendment to or repeal of chapter 19-24.1 before December 8, 2023, is subject to the requirements of section 8 of article III of the Constitution of North Dakota.

SECTION 10. STATEMENT OF LEGISLATIVE INTENT - NEWBORN SCREENING - CARDIAC SYSTEM OF CARE TASK FORCE. It is the intent of the sixty-fifth legislative assembly that the state department of health's newborn screening program collaborate with the cardiac system of care task force to identify and provide critical congenital heart defect educational materials and algorithms for health care facilities and resources for parents and to explore options for data collection and analysis for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. AMENDMENT. Section 43-28.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-28.1-01. Loan repayment program - Dentists - Defined need - Maximum amount of funds.

~~Each year~~Annually, the state health council shall select, from a pool of applicants, dentists who ~~shall~~will provide dental services in cities or surrounding areas, or both, in this state which the state health council identifies as having a defined need for dental services. The dentists selected from this pool of applicants ~~may include dentists who will~~shall agree to accept medical assistance patients and assignments or provide dental services in a public health clinic, a practice with a focus on an underserved population, or a nonprofit dental clinic. ~~The dentists are~~A selected dentist who agrees to the terms of this program is eligible to receive funds for the repayment of ~~their~~the dentist's education loans. The funds, which are payable over a five-year period, may not exceed one hundred thousand dollars per applicant. If the state health council accepts any gifts, grants, or donations under this chapter, the council may select additional dentists for participation in the loan repayment program under this chapter.

SECTION 12. AMENDMENT. Section 43-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28.1-03. Criteria.

1. The health council shall establish criteria to be used in selecting qualified dentists and in identifying cities or surrounding areas, or both, that have a defined need for dental services. The criteria must include consideration of:
 - a. The number of dentists already providing dental services in the city or surrounding areas, or both;
 - b. Access to dental services in the city and the surrounding areas;
 - c. How the dentist will provide dental services to individuals on medical assistance or in a public health clinic, a practice with a focus on an underserved population, or a nonprofit dental clinic; and
 - d. The dentist's training in general dentistry or in a dental specialty and the extent to which such services are needed in the identified city or surrounding areas, or both.
2. As a term of receipt of funds under this chapter, a dentist shall accept medical assistance patients and assignments or provide dental services in a public health clinic, a practice with a focus on an underserved population, or a nonprofit dental clinic. For purposes of a dentist selected for loan payment under this chapter who practices within fifteen miles [24.14 kilometers] of the city limits of one of the three largest cities in the state, to qualify to receive a yearly disbursement under this chapter during that year of obligated service, the dentist must have:
 - a. Received dental medical payments of at least twenty thousand dollars in the form of medical assistance reimbursement; or
 - b. Practiced at least two full workdays per week at a public health clinic or at a nonprofit dental clinic that uses a sliding fee schedule to bill the nonprofit dental clinic's patients.
3. The health council may consult with public and private sector entities in establishing criteria and evaluating needs based on the criteria.

¹³ **SECTION 13. AMENDMENT.** Subsection 1 of section 54-27-25 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under subsection IX(c)(1) of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Except as provided in subsection 2, moneys received by the state under subsection IX(c)(1) must be deposited in the fund. Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund may be appropriated to the attorney general for the purpose of enforcing the master settlement agreement and any disputes with the agreement. All remaining principal and interest of the fund must be allocated as follows:
 - a. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal ten percent of total annual transfers from the tobacco settlement trust fund of which a minimum of eighty percent must be used for tobacco prevention and control.
 - b. Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty-five percent of total annual transfers from the tobacco settlement trust fund.
 - c. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state. Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.

SECTION 14. REPEAL. Chapter 23-38 of the North Dakota Century Code is repealed.

SECTION 15. COMPREHENSIVE TOBACCO CONTROL ADVISORY COMMITTEE RECORDS TRANSFER. As of July 1, 2017, all business-related records belonging to the comprehensive tobacco control advisory committee must be transferred to the state department of health. The comprehensive tobacco control advisory committee shall allow the state department of health to have access to the business-related records of the committee before July 1, 2017, as necessary, for the purpose of transitioning operations to the state department of health.

SECTION 16. STATEWIDE TOBACCO PREVENTION AND CONTROL PLAN - IMPLEMENTATION - EVALUATION - REPORT TO THE LEGISLATIVE MANAGEMENT. By July 31, 2017, the state department of health shall develop a statewide tobacco prevention and control plan that is consistent with the five components of the centers for disease control and prevention best practices for comprehensive tobacco control programs. At least once during the 2017-19 biennium, the state department of health shall provide for an independent review of the tobacco prevention and control plan to evaluate the effectiveness of the plan and its

¹³ Section 54-27-25 was also amended by section 39 of House Bill No. 1012, chapter 11, and section 2 of Senate Bill No. 2024, chapter 193.

implementation. Any costs related to the independent review are provided in the tobacco prevention line item in section 1 of this Act and may be paid from the tobacco prevention and control trust fund. The department shall report the results of the independent review to the legislative management.

SECTION 17. EMERGENCY. The funding included in the medical marijuana line item in section 1 and section 15 of this Act are declared to be an emergency measure.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 30

SENATE BILL NO. 2005

(Appropriations Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the Indian affairs commission for the purpose of defraying the expenses of the Indian affairs commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$874,608	(\$26,201)	\$848,407
Operating expenses	<u>253,132</u>	<u>10,572</u>	<u>263,704</u>
Total general fund	\$1,127,740	(\$15,629)	\$1,112,111
Full-time equivalent positions	5.00	(1.00)	4.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$10,619 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium.

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Information technology hardware	<u>\$9,775</u>	<u>\$0</u>
Total general fund	\$9,775	\$0

Approved April 12, 2017

Filed April 12, 2017

CHAPTER 31

SENATE BILL NO. 2006

(Appropriations Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the North Dakota aeronautics commission for the purpose of defraying the expenses of the North Dakota aeronautics commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,447,637	(\$16,415)	\$1,431,222
Operating expenses	2,060,380	143,810	2,204,190
Capital assets	300,000	(200,000)	100,000
Grants	<u>7,434,500</u>	<u>(284,500)</u>	<u>7,150,000</u>
Total all funds	\$11,242,517	(\$357,105)	\$10,885,412
Less estimated income	<u>10,308,017</u>	<u>(322,605)</u>	<u>9,985,412</u>
Total general fund	\$934,500	(\$34,500)	\$900,000
Full-time equivalent positions	7.00	0.00	7.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$18,583 from other funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Desktop support	<u>\$14,810</u>	<u>\$0</u>
Total other funds	<u>\$14,810</u>	<u>\$0</u>

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 32

SENATE BILL NO. 2007

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the veterans' home; and to provide for exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home for the purpose of defraying the expenses of the veterans' home, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$17,973,934	\$710,556	\$18,684,490
Operating expenses	4,958,742	495,497	5,454,239
Capital assets	273,270	280,033	553,303
Total all funds	\$23,205,946	\$1,486,086	\$24,692,032
Less estimated income	15,077,922	3,662,671	18,740,593
Total general fund	\$8,128,024	(\$2,176,585)	\$5,951,439
Full-time equivalent positions	120.72	0.00	120.72

SECTION 2. HEALTH INSURANCE INCREASES. The salaries and wages line item in section 1 of this Act includes the sum of \$382,267, of which \$130,374 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Shop addition	\$126,800	\$0
Irrigation system	83,000	0
Equipment	195,530	44,500
Health information exchange software	0	15,000
Nurse call system upgrade	0	82,500
Total all funds	\$405,330	\$142,000
Less estimated income	405,330	142,000
Total general fund	\$0	\$0

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The veterans' home shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. EXEMPTION - VETERANS' HOME CONSTRUCTION PROJECT FUNDING. The unexpended amount remaining from the appropriation for the veterans' home construction project in chapter 53 of the 2009 Session Laws which was continued into the 2011-13 biennium, the 2013-15 biennium, and the 2015-17 biennium is not subject to the provisions of section 54-44.1-11 at the end of the 2015-17 biennium and may continue into the 2017-19 biennium for paying expenses of the veterans' home construction project.

SECTION 5. EXEMPTION - SHOP ADDITION PROJECT FUNDING. The unexpended amount remaining from the appropriation for the veterans' home shop addition project in chapter 38 of the 2013 Session Laws which was continued into the 2015-17 biennium under section 54-44.1-11 and the unexpended amount remaining from the appropriation for the veterans' home shop addition project in chapter 7 of the 2015 Session Laws are not subject to the provisions of section 54-44.1-11 at the end of the 2015-17 biennium and may be continued into the 2017-19 biennium for paying expenses of the veterans' home shop addition project.

Approved April 12, 2017

Filed April 12, 2017

CHAPTER 33**SENATE BILL NO. 2008**

(Appropriations Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated 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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,737,190	\$76,650	\$6,813,840
Operating expenses	1,575,252	820	1,576,072
Contingency	<u>77,000</u>	<u>(57,000)</u>	<u>20,000</u>
Total special funds	\$8,389,442	\$20,470	\$8,409,912
Full-time equivalent positions	30.00	0.00	30.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$79,639 from other funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Desktop support	<u>\$66,325</u>	<u>\$0</u>
Total other funds	\$66,325	\$0

SECTION 4. OPERATIONS OF DEPARTMENT OF FINANCIAL INSTITUTIONS AND SECURITIES DEPARTMENT - STUDY BY GOVERNOR - REPORT TO LEGISLATIVE MANAGEMENT. During the 2017-18 interim, the governor shall study the operations of the department of financial institutions and the securities department to determine the feasibility and desirability of combining the agencies into a single department. The governor shall report to the legislative management regarding the findings and recommendations of the study by July 1, 2018.

Approved April 12, 2017

Filed April 12, 2017

CHAPTER 34

SENATE BILL NO. 2009

(Appropriations Committee)

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 facility operations and maintenance costs of the state fair association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Premiums	\$532,665	(\$17,000)	\$515,665
Total general fund	\$532,665	(\$17,000)	\$515,665

SECTION 2. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Asphalt overlay project	\$467,250	\$0
Total general fund	\$467,250	\$0

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

Facility operations and maintenance costs.

Facility operations and maintenance costs, other than costs resulting from a natural disaster, are to be funded by state fair association funds.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 35

SENATE BILL NO. 2010

(Appropriations Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of 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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$886,297	\$19,156	\$905,453
Operating expenses	<u>372,224</u>	(16,373)	355,851
Grants	<u>2,117,390</u>	(26,896)	<u>2,090,494</u>
Total all funds	\$3,375,911	(\$24,113)	\$3,351,798
Less estimated income	<u>1,745,467</u>	41,455	<u>1,786,922</u>
Total general fund	\$1,630,444	(\$65,568)	\$1,564,876
Full-time equivalent positions	5.00	0.00	5.00

SECTION 2. HEALTH INSURANCE INCREASE. Section 1 of this Act includes the sum of \$13,273 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. APPROPRIATION - CULTURAL ENDOWMENT FUND. All income from the cultural endowment fund is appropriated to the council on the arts for the furthering of the cultural arts in the state for the biennium beginning July 1, 2017, and ending June 30, 2019.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 36

SENATE BILL NO. 2011

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the highway patrol; to create and enact a new section to chapter 39-03 of the North Dakota Century Code, relating to capitol building access cards; to amend and reenact subdivision j of subsection 3 of section 39-12-02 of the North Dakota Century Code, relating to fees for electronic permits; and to provide for a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the highway patrol for the purpose of defraying the expenses of the highway patrol, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administration	\$3,550,401	(\$3,550,401)	\$0
Field operations	52,348,835	5,239,871	57,588,706
Total all funds	\$55,899,236	\$1,689,470	\$57,588,706
Less estimated income	12,955,491	2,105,787	15,061,278
Total general fund	\$42,943,745	(\$416,317)	\$42,527,428
Full-time equivalent positions	215.00	(11.00)	204.00

SECTION 2. HEALTH INSURANCE INCREASE. Section 1 of this Act includes the sum of \$533,578, of which \$426,619 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Mobile radio equipment	\$626,000	\$0
Outdoor range upgrade	38,000	0
Skid car training system	66,000	0
New trooper startup costs	33,863	0
Taser and AED equipment	0	358,000
Total all funds	\$763,863	\$358,000
Total special funds	107,050	358,000
Total general fund	\$656,813	\$0

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The highway patrol shall report to the

appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. SPECIAL FUNDS TRANSFER - HIGHWAY TAX DISTRIBUTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$6,912,904, 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, 2017, and ending June 30, 2019.

SECTION 5. MOTOR CARRIER ELECTRONIC PERMIT TRANSACTION FUND. The estimated income line item in section 1 of this Act includes \$1,369,165 from the motor carrier electronic permit transaction fund for the purpose of defraying various expenses associated with the issuance of permits and other nonenforcement motor carrier and administrative activities during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. The estimated income line item in section 1 of this Act includes \$358,000 of one-time funding from the strategic investment and improvements fund for equipment replacement during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. PAYMENTS TO HIGHWAY PATROL OFFICERS. Each patrol officer of the state highway patrol is entitled to receive from funds appropriated in section 1 of this Act an amount not to exceed \$200 per month for the biennium beginning July 1, 2017, and ending June 30, 2019. The payments are in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at the patrol officers' respective home stations. The amounts must be paid at the time and in the same manner as salaries are paid to members of the highway patrol and may be paid without the presentation of receipts or other memorandums.

SECTION 8. A new section to chapter 39-03 of the North Dakota Century Code is created and enacted as follows:

Capitol building access card fund - Continuing appropriation.

There is created in the state treasury a capitol building access card fund. The fund consists of any fees received by the superintendent for the issuance of capitol building access cards. The superintendent shall establish policies regarding the issuance of capitol building access cards and may charge a fee of ten dollars for each access card issued to an individual who is not an employee of the state of North Dakota. All moneys in the fund are appropriated to the highway patrol on a continuing basis for costs associated with the issuance of capitol building access cards and capitol complex security needs.

14 SECTION 9. AMENDMENT. Subdivision j of subsection 3 of section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

- j. The highway patrol may establish an online electronic permit system. If the highway patrol establishes an online electronic permit system, the highway patrol shall assess an additional fee of up to fifteen dollar-feedollars for

¹⁴ Section 39-12-02 was also amended by section 1 of House Bill No. 1288, chapter 270, section 1 of House Bill No. 1320, chapter 271, and section 3 of Senate Bill No. 2097, chapter 258.

every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.

Approved April 19, 2017

Filed April 20, 2017

CHAPTER 37

SENATE BILL NO. 2012

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to amend and reenact section 24-02-37 of the North Dakota Century Code, relating to state highway fund expenditures; to provide for a transfer; to provide for disposition of maintenance section sites; to provide exemptions; to provide for studies; 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 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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$207,778,278	(\$6,299,937)	\$201,478,341
Operating expenses	295,762,751	(66,381,105)	229,381,646
Capital assets	700,081,402	71,020,449	771,101,851
Grants	<u>62,918,030</u>	<u>4,610,000</u>	<u>67,528,030</u>
Total special funds	\$1,266,540,461	\$2,949,407	\$1,269,489,868
Full-time equivalent positions	1,080.50	(33.50)	1,047.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$2,702,395 from other funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
General fund transfers to highway fund	\$486,982,489	\$0
Transfer to public transportation fund	186,900	0
Short line railroad	7,000,000	0
Transportation distributions - non-oil-producing counties	104,664,000	0
Contingent transfer to highway fund	18,690,000	0
Truck harmonization study	56,070	0
Recreational road access	1,869,000	0
Vehicle registration and titling system replacement	2,500,000	0
Motor coach reimbursement	<u>934,500</u>	<u>0</u>
Total all funds	\$622,882,959	\$0
Total special funds	<u>9,500,000</u>	<u>0</u>
Total general fund	\$613,382,959	\$0

SECTION 4. LINE ITEM TRANSFERS. The director of the department of transportation may transfer between the salaries and wages, operating, 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 5. ADDITIONAL FUNDING FOR FEDERAL HIGHWAY MATCHING FUNDS. The department of transportation may use up to \$16,300,000 of the funding transferred, pursuant to section 4 of chapter 12 of the 2015 Session Laws, from the general fund to the highway fund to provide state matching funds for federal highway construction funding provided by the federal highway administration during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. EXEMPTION - ENHANCED STATE HIGHWAY INVESTMENT FUNDING. Section 54-44.1-11 does not apply to funding of \$503,115,558 in the capital assets line item relating to enhanced state highway investments in section 1 of chapter 12 of the 2015 Session Laws. Any funds continued into the 2017-19 biennium but not spent by June 30, 2019, must be continued into the biennium beginning July 1, 2019, and ending June 30, 2021, and may be expended only for enhanced state highway investments.

SECTION 7. EXEMPTION - SPECIAL ROADS FUND PROJECTS. Funding of \$2,000,000 appropriated to the department of transportation for special road projects, as contained in section 1 of chapter 12 of the 2015 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the department of transportation for special road projects during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 8. DISPOSITION OF MAINTENANCE SECTION SITES. Notwithstanding any other provision of law, the department of transportation may discontinue operations of department maintenance section sites in New England, Starkweather, Fessenden, Courtenay, Gackle, Litchville, Finley, and Mayville as provided in this section.

1. During the biennium beginning July 1, 2017, and ending June 30, 2019, the department may not dispose of any real property assigned to a section site where operations are being discontinued.
2. The department shall consult with representatives of the political subdivisions in which the section site is located, in the following order: first with the county, second with the city, and third with the township. If requested by any of the political subdivisions, the department shall negotiate a lease agreement with that political subdivision regarding the use of the section site and facilities. The lease agreement must address, at a minimum, the following:
 - a. The political subdivision may use the department's maintenance site and building, road oil tank, and shop equipment contained in the building. The political subdivision must be responsible for all routine maintenance and utility costs.
 - b. If requested by the political subdivision, the department may transfer ownership of an equipped snow plow to the political subdivision. The snow plow must be one that the department intends to dispose of as part of its equipment replacement schedule.

- c. The department may charge a reasonable fee to the political subdivision under the lease.
 - d. The department shall retain the use of salt buildings located on the property, the right to park one vehicle inside the maintenance building during a major winter storm, the use of an electrical outlet to plug in various vehicles for wintertime loading of deicing materials, and the right to use a portion of the site for a salt and sand pile for winter snow and ice control operations.
 - e. If an emergency occurs in or around a section site, and the department is unable to respond, the political subdivision may agree to have an individual available to respond to the emergency. The political subdivision may establish a process that allows emergency response teams to contact the political subdivision to allow it to respond to an emergency occurring within the area currently served by the section site. The response may require the political subdivision to provide snow and ice control on the state highway system for an emergency situation.
3. If the department does not enter a lease agreement for a section site during the biennium beginning July 1, 2017, and ending June 30, 2019, the department may dispose of the section site property in accordance with state law after June 30, 2019.
 4. If the department has an employee whose home residence is located within the vicinity of the maintenance section the department intends to discontinue, the department shall locate one of its snow plows at or near the maintenance section site during a major winter storm event from November 1 through March 31 of each fiscal year.

SECTION 9. AMENDMENT. Section 24-02-37 of the North Dakota Century Code is amended and reenacted as follows:

24-02-37. State highway fund - Priorities for expenditure - Use of investment income.

The state highway fund, created by law and not otherwise appropriated and allocated, must be applied and used for the purposes named in this section, as follows:

1. Except for investment income as provided in subsection 3, the fund must be applied in the following order of priority:
 - a. The cost of maintaining the state highway system.
 - b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota. Notwithstanding any other provision of law, the department of transportation may repay the United States department of transportation for previous related expenditures from current biennium appropriations to allow the department to reobligate the federal aid to other federal aid projects.
 - c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without

federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

2. All funds heretofore appropriated or hereafter appropriated or transferred to the department, whether earmarked or designated for special projects or special purposes or not, must be placed or transferred into a single state highway fund in the office of the state treasurer and any claims for money expended by the department upon warrants prepared and issued by the office of management and budget and signed by the state auditor under this title must be paid out of the state highway fund by the state treasurer; provided, however, that the commissioner shall keep and maintain complete and accurate records showing that all expenditures have been made in accordance with legislative appropriations and authorizations.
3. The state treasurer shall deposit the moneys in the state highway fund in an interest-bearing account at the Bank of North Dakota. The state treasurer shall deposit eighty percent of the income derived from the interest-bearing account in a special interest-bearing account in the state treasury known as the special road fund. The special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the special road committee. A political subdivision or state agency may request funds from the special road fund by applying to the committee on forms designated by the committee. The committee may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund. Any moneys in the fund not obligated by the special road committee by June thirtieth of each odd-numbered year must be held for an additional two years after which the funds revert to the state highway fund.

SECTION 10. DEPARTMENT OF TRANSPORTATION STUDY - SNOW AND ICE CONTROL SERVICES - REPORT TO LEGISLATIVE MANAGEMENT. During the 2017-18 interim, the department of transportation shall study the manner in which it provides snow and ice control services on the state highway system, including the existing costs for these services and any potential savings available in providing these services. Based on its findings, the department shall determine the most efficient and effective manner in which to provide snow and ice control services. The department shall provide a report to the legislative management before July 1, 2018, regarding the results of the study.

SECTION 11. DEPARTMENT OF TRANSPORTATION STUDY - CONSOLIDATION OF SERVICES - REPORT TO LEGISLATIVE MANAGEMENT - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. During the 2017-18 interim, the department of transportation shall study options to consolidate transportation facilities within Williams County and the Williston district headquarters. The department shall provide the final report, including the results of the study, to the legislative management before July 1, 2018. If the results of the study determine that it is beneficial to consolidate facilities, the department may proceed with consolidation efforts. Before the completion of the study and the determination of whether the consolidation of facilities is beneficial, the department may not construct any new buildings at the Williston district headquarters. The department shall provide reports to the appropriations committees of the sixty-sixth legislative assembly regarding the study and the outcomes of the study.

SECTION 12. LEGISLATIVE MANAGEMENT STUDY - TRANSPORTATION FUNDING. During the 2017-18 interim, the legislative management shall consider

studying the funding mechanisms and options available to the department of transportation, political subdivisions, and public transportation providers, for road construction, maintenance, other transportation infrastructure needs, and transit services. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 13. DEPARTMENT OF TRANSPORTATION FEES - REPORT TO BUDGET SECTION. The department of transportation shall report to the legislative management's budget section by September 30, 2017, and by September 30, 2018, regarding all fees charged by the department in comparison to the actual cost of providing the services for which the fee is charged.

SECTION 14. TELECOMMUNICATIONS INFRASTRUCTURE ON HIGHWAY RIGHTS OF WAY - LIMITATION - DEPARTMENT OF TRANSPORTATION AND INFORMATION TECHNOLOGY DEPARTMENT STUDY - REPORT. Prior to the department of transportation permitting any nonstate owned, controlled, or leased wireless telecommunication infrastructure used for wireless transmission of voice, data, images, or other signals or information within state highway rights of way, the department of transportation and the information technology department shall study, during the 2017-18 interim, the benefits of allowing wireless telecommunication infrastructure within state highway rights of way and what, if any, requirements of allowing the installation may be in the public interest. The department of transportation and the information technology department shall report the results of the study to the legislative management by June 30, 2018.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 38

SENATE BILL NO. 2013

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to provide an appropriation to the state treasurer; to provide for transfers; to provide for distributions from permanent funds; to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the energy impact fund; to amend and reenact subsection 5 of section 57-51-01 and sections 57-51-15 and 57-51.1-07.6 of the North Dakota Century Code, relating to oil and gas gross production tax definitions and allocations and the political subdivision allocation fund; to repeal section 57-51.1-07.6 of the North Dakota Century Code, relating to the political subdivision allocation fund; to provide exemptions; to provide for reports; to provide statements of legislative intent; 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. 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, the strategic investment and improvements fund, the energy impact 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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,123,516	(\$117,966)	\$6,005,550
Operating expenses	2,019,637	(243,914)	1,775,723
Capital assets	0	3,600,000	3,600,000
Grants	99,300,000	(59,300,000)	40,000,000
Contingencies	100,000	0	100,000
Energy infrastructure and impact office	<u>700,000</u>	<u>(700,000)</u>	<u>0</u>
Total special funds	\$108,243,153	(\$56,761,880)	\$51,481,273
Full-time equivalent positions	33.00	(2.00)	31.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes \$84,948 from special funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Oil and gas impact grants - airports	\$0	\$25,000,000
Other grants - airports	0	15,000,000

Information technology project	0	<u>3,600,000</u>
Total special funds	\$0	\$43,600,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. APPROPRIATION - STATE TREASURER - DISTRIBUTIONS TO NON-OIL-PRODUCING COUNTIES. There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$8,000,000, or so much of the sum as may be necessary, and out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$8,100,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing distributions to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county, for the biennium beginning July 1, 2017, and ending June 30, 2019. In August 2017, the state treasurer shall distribute \$16,100,000, or so much of the sum as may be necessary, to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county. The distribution to each non-oil-producing county must provide for an allocation of \$10,000 to each organized and unorganized township within the county. The amount allocated to organized townships under this section must be paid by the county treasurer to each organized township. The amount allocated to unorganized townships under this section must be credited by the county treasurer to a special fund for unorganized township roads. The distributions under this section must be used for the maintenance and improvement of township paved and unpaved roads and bridges. A township is not eligible for an allocation of funds under this section if the township does not maintain any township roads. For purposes of this subsection, a "non-oil-producing county" means a county that received no allocation of funding or a total allocation under subsection 2 of section 57-51-15 of less than \$5,000,000 for the period beginning September 1, 2015, and ending August 31, 2016. For the purposes of calculating the unobligated balance of the state disaster relief fund under section 57-51.1-07.5, the moneys appropriated in this section from the state disaster relief fund may not be considered an obligation of the state disaster relief fund until after July 31, 2017. The funding appropriated in this section is considered a one-time funding item.

SECTION 5. TRANSFER - POLITICAL SUBDIVISION ALLOCATION FUND TO ENERGY IMPACT FUND. The state treasurer shall transfer \$8,000,000 from the political subdivision allocation fund to the energy impact fund during August 2017.

SECTION 6. TRANSFER - POLITICAL SUBDIVISION ALLOCATION FUND TO STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. After the transfer in section 5 of this Act, the state treasurer shall transfer any amount remaining in the political subdivision allocation fund from the political subdivision allocation fund to the strategic investment and improvements fund during August 2017.

SECTION 7. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO ENERGY IMPACT FUND. The state treasurer shall transfer \$3,000,000 from the strategic investment and improvements fund to the energy impact fund during August 2017.

SECTION 8. DISTRIBUTIONS TO STATE INSTITUTIONS. Pursuant to article IX of the Constitution of North Dakota, the board of university and school lands shall

distribute during the biennium beginning July 1, 2017, and ending June 30, 2019, the following amounts, from the permanent funds managed for the benefit of the following entities:

Commons schools	\$288,264,000
North Dakota state university	4,738,000
University of North Dakota	3,662,000
Youth correctional center	1,422,000
School for the deaf	1,598,000
North Dakota state college of science	1,446,286
State hospital	1,370,286
Veterans' home	622,286
Valley City state university	808,000
North Dakota vision services - school for the blind	840,286
Mayville state university	542,000
Dakota college at Bottineau	186,286
Dickinson state university	186,286
Minot state university	<u>186,286</u>
Total	\$305,872,002

SECTION 9. ONE-TIME ADJUSTMENT TO DISTRIBUTIONS TO STATE INSTITUTIONS. Pursuant to article IX of the Constitution of North Dakota and in addition to the distributions in section 4 of this Act, the board of university and school lands shall distribute during the biennium beginning July 1, 2017, and ending June 30, 2019, the following one-time corrections resulting from the misallocation of prior mineral revenues, from the permanent funds managed for the benefit of the following entities:

North Dakota state college of science	\$89,698
State hospital	89,698
Veterans' home	89,698
North Dakota vision services - school for the blind	89,698
Dakota college at Bottineau	89,698
Dickinson state university	89,698
Minot state university	89,698
Youth correctional center	<u>(621,186)</u>
Total	\$6,700

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of chapter 13 of the 2015 Session Laws and for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws is not subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2017, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. EXEMPTION - FLOOD-IMPACTED POLITICAL SUBDIVISION INFRASTRUCTURE DEVELOPMENT GRANTS. Up to \$1,325,500 appropriated from the general fund in section 10 of chapter 579 of the 2011 Session Laws for flood-impacted political subdivision infrastructure development grants, which was awarded but not yet reimbursed to the city of Minot for a landfill expansion project, is not subject to section 54-44.1-11, and any unexpended funds are available to reimburse the city of Minot during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 12. INFORMATION TECHNOLOGY PROJECT - BUDGET SECTION APPROVAL - LEGISLATIVE INTENT - AGENCY EFFICIENCIES. The capital assets line item and the total special funds line item in section 1 of this Act include \$3,600,000 from the state lands maintenance fund for an information technology project. Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section. It is the intent of the sixty-fifth legislative assembly that during the 2017-18 interim, the governor and the commissioner of university and school lands achieve efficiencies and budgetary savings within the department of trust lands through the use of innovative ideas and through alternative solutions relating to information technology.

SECTION 13. OIL AND GAS IMPACT GRANT FUND - AIRPORT GRANTS. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$25,000,000 from the oil and gas impact grant fund for grants to airports, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the \$25,000,000, the board of university and school lands shall award a grant of \$20,000,000 to the Williston airport and a grant of \$5,000,000 to the Dickinson airport. A grant may be awarded to the Williston airport only when any related federal funding is committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

SECTION 14. ENERGY IMPACT FUND - WILLISTON AIRPORT GRANT. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$15,000,000 from the energy impact fund for a grant to the Williston airport, for the biennium beginning July 1, 2017, and ending June 30, 2019. A grant may be awarded to the Williston airport only when any related federal funding is committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

SECTION 15. AMENDMENT. Subsection 5 of section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~"Hub city" means, for the period beginning September 1, 2015, and ending August 31, 2017, a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one percent of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota. "Hub city" means, after August 31, 2017, a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one~~two percent of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota.

SECTION 16. AMENDMENT. Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. Gross production tax allocation.

The gross production tax must be allocated monthly as follows:

1. ~~First the~~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~~. The state treasurer shall allocate the funding in the following order:

- a. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city, which is located in a county that received an allocation under subsection 2, a monthly amount that will provide a total allocation of three hundred seventy-five thousand dollars per fiscal year for each full or partial percentage point of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~To each hub city, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of three hundred seventy-five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota; For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:
- (1) Thirty-three percent for the city of Williston;
 - (2) Seventeen percent for the city of Dickinson; and
 - (3) Four percent for the city of Minot.
- b. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city, which is located in a county that did not receive an allocation under subsection 2, a monthly amount that will provide a total allocation of two hundred fifty thousand dollars per fiscal year for each full or partial percentage point of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~To each hub city, which is located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of two hundred fifty thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota;.
- c. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city school district, which is located in a county that received an allocation under subsection 2, a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point of the hub city's private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~To each hub city school district, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of the hub city's private covered employment engaged in the

mining industry, according to annual data compiled by job service North Dakota, ~~provided that hub, Hub~~ city school districts, which are located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, must be excluded from the allocations under this subdivision; For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:

- (1) Thirty-three percent for the city of Williston;
 - (2) Seventeen percent for the city of Dickinson; and
 - (3) Four percent for the city of Minot.
- d. ~~Allocate to~~To each county that received more than five million dollars but less than thirty million dollars of total allocations under subsection 2 in ~~state~~the most recently completed even-numbered fiscal year 2014, the state treasurer shall allocate a monthly amount that will ~~provide a total allocation of one million five hundred thousand dollars per fiscal year to be added by the state treasurer~~be added to the allocations to school districts under subdivision b of subsection 5;
- e. ~~Credit revenues to the oil and gas impact grant fund, but not in an amount exceeding one hundred forty million dollars per biennium for the 2015-17 biennium, and not in an amount exceeding one hundred million dollars per biennium thereafter;~~
- f. ~~Credit eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars in a state fiscal year and not in an amount exceeding forty million dollars per biennium;~~
- g. ~~Credit four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars in a state fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars; and~~
- h. ~~Allocate the remaining revenues under subsection 3, as follows:~~
- (1) To each county that received more than five million dollars but not exceeding ten million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (2) To each county that received more than ten million dollars but not exceeding fifteen million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million two hundred fifty thousand dollars per fiscal

year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.

- (3) To each county that received more than fifteen million dollars but not exceeding twenty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (4) To each county that received more than twenty million dollars but not exceeding twenty-five million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of seven hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (5) To each county that received more than twenty-five million dollars but not exceeding thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
- e. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding ten million dollars per biennium. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty-first of the following odd-numbered calendar year.
- (2) After August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars per fiscal year.
- f. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding four million dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.
- (2) After August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.

- g. For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:
- (1) Up to twenty-five million dollars to the oil and gas impact grant fund.
 - (2) Any remaining revenues under subsection 3.
- h. After August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:
- (1) Up to five million dollars per biennium to the oil and gas impact grant fund. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty-first of the following odd-numbered calendar year.
 - (2) Any remaining revenues under subsection 3.
- i. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
2. a. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received less than five million dollars of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:
- (1) The first five million dollars of collections received each fiscal year is allocated to the county.
 - (2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.
- b. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:
- (1) The first five million dollars of collections received each fiscal year is allocated to the county. From the first five million dollars allocated to the county, the state treasurer shall allocate an amount from each county to the energy impact fund to provide a total allocation of two million per fiscal year to the fund. The amount allocated from each county to the energy impact fund under this paragraph must be proportional to the county's monthly oil and gas gross production tax revenue collected relative to the total monthly oil and gas gross production tax revenue collected from all the counties under this subdivision. The state treasurer shall allocate the amount remaining from this paragraph to the county under subsection 5. For the purposes of determining the counties that received five million dollars

or more of total allocations under this subsection in the most recently completed even-numbered fiscal year under this section, any amounts withheld from the county for allocations to the energy impact fund are considered allocations to the county.

- (2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.
- c. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated after August 31, 2019, as follows:
- a. (1) The first five million dollars is allocated to the county.
- b. (2) Of all annual revenue exceeding five million dollars, thirty percent is allocated to the county.
- d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.
4. For a county that received less than five million dollars of allocations under subsection 2 in ~~statethe~~ the most recently completed even-numbered fiscal year 2014, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
- a. Forty-five percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
- b. Thirty-five percent must be distributed to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.
- c. Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total

employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.

- d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
5. For a county that received five million dollars or more of allocations under subsection 2 in ~~state~~the most recently completed even-numbered fiscal year 2014, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
- a. Sixty percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
 - b. Five percent must be distributed to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.
 - c. Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.
 - d. Three percent must be allocated among the organized and unorganized townships of the county. The state treasurer shall allocate the funds available under this subdivision among townships in proportion to each township's road miles relative to the total township road miles in the county. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.
 - e. Three percent must be allocated among the organized and unorganized townships in all the counties that received five million dollars or more of allocations under subsection 2 in the most recently completed ~~state~~even-numbered fiscal year. The amount available under this subdivision must be allocated by the state treasurer in an equal amount to each eligible organized and unorganized township. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.

- f. Nine percent must be distributed among hub cities. Sixty percent of funds available under this subdivision must be distributed to the hub city receiving the highest percentage of allocations to hub cities under subdivision a of subsection 1 for the quarterly period, thirty percent of funds available under this subdivision must be distributed to the hub city receiving the second highest percentage of such allocations, and ten percent of funds available under this subdivision must be distributed to the hub city receiving the third highest percentage of such allocations. Hub cities, which are located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, must be excluded from the allocations under this subsection. If fewer than three hub cities are eligible for the allocations under this subdivision, the state treasurer shall allocate the available funds in proportion to the amounts the eligible hub cities received under subdivision a of subsection 1.
- g. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
6. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:
- a. The county's statement of revenues and expenditures;
 - b. The county's ending fund balances;
 - c. The amounts allocated under this section to the county's general fund, the amounts expended from these allocations, and the purposes of the expenditures; and
 - d. The amounts allocated under this section to or for the benefit of townships within the county, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

7. Within thirty days after the end of each fiscal year ended June thirtieth, each school district that has received an allocation under this section shall file a report for the fiscal year ended June thirtieth with the commissioner, in a format prescribed by the commissioner, including:
- a. The school district's statement of revenue and expenditures;
 - b. The school district's ending fund balances; and
 - c. The amounts allocated under this section to the school district, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due,

the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

SECTION 17. A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

Energy impact fund.

There is created in the state treasury the energy impact fund. The fund consists of all moneys deposited in the fund under section 57-51-15. The moneys in the fund may be spent pursuant to legislative appropriations.

SECTION 18. AMENDMENT. Section 57-51.1-07.6 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.6. Political subdivision allocation fund – Oil and gas tax revenue allocations to political subdivisions – State treasurer – Continuing appropriation.

There is created in the state treasury the political subdivision allocation fund. The fund consists of oil and gas tax revenue deposited in the fund pursuant to this chapter. ~~All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of allocations to political subdivisions in oil-producing counties.~~

1. ~~If the balance of the fund exceeds ten million dollars on March first of each odd-numbered year, within thirty-one days, the state treasurer shall allocate all moneys in the fund to eligible political subdivisions in oil-producing counties based on each political subdivision's oil and gas gross production tax allocations under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year. The allocation to each eligible political subdivision must be proportional to each political subdivision's total oil and gas gross production tax allocation under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year relative to the combined total of all oil and gas gross production tax allocations under subsection 4 and subsection 5 of section 57-51-15 in the most recently completed formula allocation year. For purposes of this subsection, "formula allocation year" means the period beginning September first of an odd-numbered year and ending August thirty-first of the following even-numbered year.~~
2. ~~If the balance of the fund exceeds ten million dollars on August first of each odd-numbered year, within thirty-one days, the state treasurer shall allocate all moneys in the fund to eligible political subdivisions in oil-producing counties based on each political subdivision's oil and gas gross production tax allocations under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year. The allocation to each eligible political subdivision must be proportional to each political subdivision's total oil and gas gross production tax allocation under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year relative to the combined total of all oil and gas gross production tax allocations under subsection 4 and subsection 5 of section 57-51-15 in the most recently completed formula allocation year. For purposes of this subsection, "formula allocation year" means the period beginning September first of an odd-numbered year and ending August thirty-first of the following even-numbered year.~~

SECTION 19. REPEAL. Section 57-51.1-07.6 of the North Dakota Century Code is repealed.

SECTION 20. LEGISLATIVE INTENT - ENCOURAGEMENT OF ENERGY INFRASTRUCTURE INVESTMENT - COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS - USE OF TERMS. It is the intent of the sixty-fifth legislative assembly that the state of North Dakota encourage the continued development of energy infrastructure that will help reduce instances of natural gas flaring and increase the market value received for oil and gas produced within the state generally and from state-owned lands specifically which will increase the value of royalties paid to the funds under the control of the board of university and school lands. Consistent with this intent, the commissioner of university and school lands shall continue to interpret the terms "gross production," "market value," and "gross proceeds of sale" in its lease form to mean a value determined at the producing well or associated production facility, or in the surrounding field or area, where the oil and gas was produced, before any post-production activities undertaken by the lessee, operator, or purchaser after the oil and gas has been transported from the producing well and associated production facility. These values must be determined by the amount received by the lessee in an arm's length contract, or in the absence of an arm's length contract, either a comparable sales method or a work-back calculation methodology consistent with state law.

SECTION 21. STUDY OF OIL AND GAS VALUATION - REPORT TO ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE.

1. During the 2017 18 interim, the tax department, in consultation with the board of university and school lands, the industrial commission, and other state agencies as necessary, shall study the valuation of oil and gas as used to determine mineral royalty payments and tax liability. The study must include consideration of the following:
 - a. The methods used to calculate the value of oil and gas, including changes in custody, the basis for the value, any deductions or incentives applied to the value, and the point at which the value is determined.
 - b. The impact of state and federal regulations, including gas capture requirements.
 - c. The market competition for gas processing, including the possibility of rate setting by the public service commission.
 - d. The reporting of any deductions or incentives applied to the value as included on mineral royalty statements and tax reporting documents.
2. The tax department shall report to the energy development and transmission committee by September 30, 2018, regarding the results and recommendations of the study.

SECTION 22. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS TAX REVENUE ALLOCATIONS TO HUB CITIES AND HUB CITY SCHOOL DISTRICTS.

1. During the 2017-18 interim, the legislative management shall consider studying oil and gas tax revenue allocations to hub cities and hub city school districts. The study must include consideration of the following:

- a. The current and historical oil and gas tax revenue allocations to hub cities and hub city school districts.
 - b. Other state funding provided to hub cities and hub city school districts, including grants from the oil and gas impact grant fund, distributions from the strategic investment and improvements fund, state school aid payments, and payments from the state aid distribution fund and highway tax distribution fund.
 - c. Local taxing and revenue levels in hub cities compared to cities in non-oil-producing counties, including mill levies, property tax values, local sales and use taxes, and other revenue sources.
 - d. The appropriate level of oil and gas tax revenue allocations to hub cities and hub city school districts based on infrastructure and other needs.
 - e. The estimated fiscal impact to hub cities, hub city school districts, other political subdivisions, and the state if the oil and gas tax revenue allocation formula would be changed to transition hub cities and hub city school districts from allocations under subsection 1 of section 57-51-15 to allocations under subsections 4 and 5 of section 57-51-15.
 - f. The estimated fiscal impact to hub cities, hub city school districts, other political subdivisions, and the state if the oil and gas tax revenue allocation formula would be changed to discontinue the allocations to hub cities and hub city school districts under subsection 1 of section 57-51-15.
2. The membership of the committee assigned the responsibility of the study must proportionately reflect the state's population distribution between oil-producing counties and non-oil-producing counties and must include members from the finance and taxation committees and the appropriations committees.
 3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 23. EFFECTIVE DATE. Sections 15 and 16 of this Act are effective for taxable events occurring after June 30, 2017. Section 19 of this Act becomes effective September 1, 2017. House Bill No. 1300, as approved by the sixty-fifth legislative assembly, becomes effective January 1, 2018.

Approved May 2, 2017

Filed May 3, 2017

CHAPTER 39

SENATE BILL NO. 2014

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the industrial commission and the agencies under the management of the industrial commission; to provide a continuing appropriation; to provide a contingent appropriation; to provide for transfers; to amend and reenact sections 15-62.1-07, 28-25-11, 54-17-40, 54-18-19, and 57-62-02 of the North Dakota Century Code and section 26 of chapter 14 of the 2015 Session Laws, relating to loan guarantee fees, suspension of recreational licenses, the housing incentive fund, North Dakota mill and elevator profits, coal development trust fund allocations, and a financial center project; to repeal section 54-17-41 of the North Dakota Century Code, relating to housing incentive fund reports; to provide statements of legislative intent; to provide for reports; to provide exemptions; 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 industrial commission and agencies under its control for the purpose of defraying the expenses of the industrial commission and agencies under its control, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$22,132,229	(\$118,145)	\$22,014,084
Operating expenses	4,779,135	1,526,753	6,305,888
Grants - bond payments	15,040,829	(1,830,345)	13,210,484
Contingencies	0	221,737	221,737
Total all funds	\$41,952,193	(\$200,000)	\$41,752,193
Less estimated income	16,994,447	(651,241)	16,343,206
Total general fund	\$24,957,746	\$451,241	\$25,408,987
Full-time equivalent positions	116.75	(6.50)	110.25

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Bank of North Dakota operations	\$58,542,301	(\$53,097)	\$58,489,204
Capital assets	745,000	65,000	810,000

Total special funds	\$59,287,301	\$11,903	\$59,299,204
Full-time equivalent positions	181.50	0.00	181.50

Subdivision 3.

MILL AND ELEVATOR ASSOCIATION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$36,278,898	\$3,029,621	\$39,308,519
Operating expenses	27,327,000	868,000	28,195,000
Contingencies	500,000	0	500,000
Agriculture promotion	210,000	0	210,000
Total from mill and elevator fund	\$64,315,898	\$3,897,621	\$68,213,519
Full-time equivalent positions	147.00	6.00	153.00

Subdivision 4.

HOUSING FINANCE AGENCY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,745,034	\$147,022	\$7,892,056
Operating expenses	3,744,275	999,080	4,743,355
Grants	25,930,780	5,864,048	31,794,828
Housing finance agency contingencies	100,000	0	100,000
Total special funds	\$37,520,089	\$7,010,150	\$44,530,239
Full-time equivalent positions	46.00	(2.00)	44.00

Subdivision 5.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$24,957,746	\$451,241	\$25,408,987
Grand total special funds	178,117,735	10,268,433	188,386,168
Grand total all funds	\$203,075,481	\$10,719,674	\$213,795,155

SECTION 2. HEALTH INSURANCE INCREASE. Section 1 of this Act includes the sum of \$1,319,354, of which \$292,009 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Litigation	\$2,500,000	\$1,000,000
Lignite research council grant		4,672,500
Aerial photography		104,143
Contract analysis		125,000
Digital conversion		25,000
Migration to RBDMS.net		250,000
All-terrain vehicles		41,500

Core library expansion	13,625,322	0
Financial center project	<u>17,000,000</u>	<u>0</u>
Total all funds	\$38,343,465	\$1,000,000
Total special funds	<u>30,625,322</u>	<u>1,000,000</u>
Total general fund	\$7,718,143	\$0

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The industrial commission shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. LEGISLATIVE INTENT - BOND PAYMENTS. The amount of \$13,210,484 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, 2017, and ending June 30, 2019:

North Dakota university system	\$6,605,326
North Dakota university system - energy conservation projects	491,500
Department of corrections and rehabilitation	1,158,679
Department of corrections and rehabilitation - energy conservation projects	16,285
State department of health	636,877
Job service North Dakota	428,100
Office of management and budget	665,411
Attorney general's office	766,012
State historical society	1,392,629
Parks and recreation department	73,642
Research and extension service	571,520
Veterans' home	<u>404,503</u>
Total	\$13,210,484

SECTION 5. APPROPRIATION - HOUSING FINANCE AGENCY - ADDITIONAL INCOME. In addition to the amount appropriated to the housing finance agency in subdivision 4 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, 2017, and ending June 30, 2019. The housing finance agency shall notify the office of management and budget and the legislative council of any additional income or unanticipated income that becomes available to the agency.

SECTION 6. APPROPRIATION - ADDITIONAL FUNDS FROM BONDS - EMERGENCY COMMISSION APPROVAL. In addition to the amount appropriated to the industrial commission in subdivision 1 of section 1 of this Act, there is appropriated, with the approval of the emergency commission, funds that may become available to the commission from bonds authorized by law to be issued by the industrial commission for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. CONTINGENT APPROPRIATION - INDUSTRIAL COMMISSION FUNDING. The amount of \$221,737 from the general fund and two full-time equivalent positions included in subdivision 1 of section 1 of this Act may be spent only in accordance with the provisions of this section. The industrial commission shall notify the office of management and budget and the legislative council when the total number of wells capable of production and injection exceeds

- ~~In addition to the funding and full-time equivalent positions authorized in subsection 1 and subject to budget section approval, \$836,308 from the~~

~~contingencies line item and four full-time equivalent positions if the total number of wells capable of production and injection exceeds nineteen thousand four hundred wells-eighteen thousand two hundred. Subject to budget section approval, the industrial commission may spend \$221,737 from the contingencies line item and may hire two full-time equivalent positions if the total number of wells capable of production and injection exceeds eighteen thousand two hundred.~~

SECTION 8. TRANSFER - ENTITIES WITHIN THE CONTROL OF THE INDUSTRIAL COMMISSION TO INDUSTRIAL COMMISSION FUND. The sum of \$1,103,779, 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 industrial commission or entities directed to make payments to the industrial commission fund for administrative services rendered by the commission. Transfers must be made during the biennium beginning July 1, 2017, and ending June 30, 2019, upon order of the commission. Transfers from the student loan trust fund must be made to the extent permitted by sections 54-17-24 and 54-17-25.

SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS TO GENERAL FUND. The industrial commission shall transfer to the general fund \$140,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota during the biennium beginning July 1, 2017, and ending June 30, 2019. The moneys must be transferred in the amounts and at the times requested by the director of the office of management and budget after consultation with the Bank of North Dakota president.

SECTION 10. TRANSFER - BANK OF NORTH DAKOTA - PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION. The Bank of North Dakota shall transfer the sum of \$16,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the partnership in assisting community expansion fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. TRANSFER - BANK OF NORTH DAKOTA - AGRICULTURE PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION. The Bank of North Dakota shall transfer the sum of \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture partnership in assisting community expansion fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 12. TRANSFER - BANK OF NORTH DAKOTA - BIOFUELS PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION. The Bank of North Dakota shall transfer the sum of \$1,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the biofuels partnership in assisting community expansion fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 13. TRANSFER - BANK OF NORTH DAKOTA - BEGINNING FARMER REVOLVING LOAN FUND. The Bank of North Dakota shall transfer the sum of \$6,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the beginning farmer revolving loan fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. TRANSFER - BANK OF NORTH DAKOTA - SCHOOL CONSTRUCTION LOAN INTEREST RATE BUYDOWNS. The Bank of North Dakota

shall transfer the sum of \$6,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits for interest rate buydowns on outstanding school construction loans under section 15.1-36-06 during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 15. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO LIGNITE RESEARCH FUND. The department of trust lands shall transfer the sum of \$3,000,000 from the strategic investment and improvements fund to the lignite research fund during the biennium beginning July 1, 2017, and ending June 30, 2019. The funding must be used to provide grants for advanced energy technology research and development. Grant recipients must provide matching funds.

SECTION 16. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUNDS. The estimated income line item in section 1 of this Act includes \$1,000,000 from the strategic investment and improvements fund for litigation expenses.

SECTION 17. AMENDMENT. Section 15-62.1-07 of the North Dakota Century Code is amended and reenacted as follows:

15-62.1-07. Fees for insurance and other reasonable costs.

~~The agency is hereby authorized to may charge reasonable fees for guarantee and insurance to students obtaining or who have obtained loans under this chapter, and such fees. The agency may charge up to eighteen percent of accumulated principal and interest if the loans are in default under section 15-62.1-06. The fees collected under this section must be available to defray costs of administering the guarantee loan program. Fees in excess of the amount required to pay the cost of administering the program must be deposited in the reserve fund. The authority of the agency to charge reasonable fees under this section applies to all borrowers and cosigners for loans obtained under this chapter whenever the underlying note was executed and subject to the note providing for payments of fees and collections costs.~~

SECTION 18. AMENDMENT. Section 28-25-11 of the North Dakota Century Code is amended and reenacted as follows:

~~**28-25-11. Property applied - Wages exempt - Suspension of occupational or professional licenserecreational licenses for nonpayment of defaulted state guaranteed student loans.**~~

- ~~1. The judge may order any property of the judgment debtor not exempt from execution in the hands either of the judgment debtor or of any other person or due the judgment debtor to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for the debtor's personal services at any time within sixty days next preceding the order cannot be so applied when it is made to appear, by the debtor's affidavit or otherwise, that the earnings are necessary for the use of a family supported wholly or partly by the debtor's labor.~~
- ~~2. If the debt for which a judgment is entered is for a guaranteed student loan, the court, after considering the factors in subsection 1, shall address and make specific findings on the issue of whether the judgment debtor has an occupational or a professional certificate license or permit issued by or on behalf of the state or any occupational or professional boards, which the judgment debtor is required to obtain before engaging in the judgment debtor's occupation or profession. The court, based on principles of fairness, including consideration of whether the judgment debtor has been unjustly~~

~~enriched, may suspend a judgment debtor's certificate, license, or permit. Following a decision to suspend a judgment debtor's certificate, license, or permit, the court shall notify the judgment debtor that the decision becomes final thirty days after the notification unless the judgment debtor satisfies the entire outstanding payment due or makes regular payment on the judgment in a manner and at times satisfactory to the court. The court shall notify the proper licensing authority of the court's decision to suspend a judgment debtor's certificate, license, or permit. A certificate, license, or permit suspended by an order issued under this section may be reissued only by order of the court. An appeal by a judgment debtor who has had a certificate, license, or permit suspended under this section is an appeal from the court's order and may not be appealed to the licensing authority. The court may withhold or suspend any certificate, permit, or license issued by lottery, tag, electronically, or over the counter by the director of the game and fish department which the judgment debtor is required to obtain before engaging in a recreational activity. Following a decision to withhold or suspend a judgment debtor's certificate, permit, or license for failure to repay a state guaranteed student loan, the court shall notify the judgment debtor that the decision becomes final thirty days after the notification unless the judgment debtor satisfies or makes arrangements to pay the entire outstanding payment due or makes regular payment on the judgment in a manner and at times satisfactory to the court. The court shall notify the director of the game and fish department of the court's decision to withhold or suspend a debtor's certificate, permit, or license. A certificate, permit, or license withheld or suspended by an order issued under this section may be reissued only by order of the court. An appeal by a debtor who has had a certificate, permit, or license suspended or withheld under this section is an appeal from the court's order and may not be appealed to the director of the game and fish department.~~

SECTION 19. AMENDMENT. Section 54-17-40 of the North Dakota Century Code is amended and reenacted as follows:

54-17-40. ~~(Effective through June 30, 2017)~~ Housing incentive fund - Continuing appropriation - Report to budget section.

1. The housing incentive fund is created as a special revolving fund at the Bank of North Dakota. The housing finance agency may direct disbursements from the fund and a continuing appropriation from the fund is provided for that purpose.
2. a. After a public hearing, the housing finance agency shall create an annual allocation plan for the distribution of the fund. At least twenty-five percent of the fund must be used to assist developing communities to address an unmet housing need or alleviate a housing shortage. ~~The agency may collect a reasonable administrative fee from the fund, project developers, applicants, or grant recipients. The origination fee assessed to grant recipients may not exceed five percent of the project award.~~
- b. The annual allocation plan must give first priority through its scoring and ranking process to housing for essential service workers. For purposes of this subsection, "essential service workers" means individuals employed by a city, county, school district, medical or long-term care facility, the state of North Dakota, or others as determined by the housing finance agency who fulfill an essential public service.

- c. The second priority in the annual allocation plan must be to provide housing for individuals and families of low or moderate income. For purposes of this second priority, eligible income limits are determined as a percentage of median family income as published in the most recent federal register notice. Under this second priority, the annual allocation plan must give preference to projects that benefit households with the lowest income and to projects that have rent restrictions at or below department of housing and urban development published federal fair market rents or department of housing and urban development section 8 payment standards.

~~The housing finance agency shall maintain a register reflecting the number of housing units owned or master leased by cities, counties, school districts, or other employers of essential service workers. This register must also reflect those entities that are providing rent subsidies for their essential workers. The housing finance agency shall report quarterly to the budget section of the legislative management on the progress being made to reduce the overall number of units owned, master leased, or subsidized by these entities. This report must include a listing of projects approved and number of units within those projects that provide housing for essential service workers.~~

3. The housing finance agency shall adopt guidelines for the fund so as to address unmet housing needs in this state. Assistance from the fund may be used solely for:
 - a. New construction, rehabilitation, or acquisition of a multifamily housing project;
 - b. Gap assistance, matching funds, and accessibility improvements;
 - c. Assistance that does not exceed the amount necessary to qualify for a loan using underwriting standards acceptable for secondary market financing or to make the project feasible; and
 - d. Rental assistance, emergency assistance, or targeted supportive services designated to prevent homelessness.
4. Eligible recipients include units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; and nonprofit organizations and for-profit developers of multifamily housing. Individuals may not receive direct assistance from the fund.
5. Except for subdivision d of subsection 3, assistance is subject to repayment or recapture under the guidelines adopted by the housing finance agency. Any assistance that is repaid or recaptured must be deposited in the fund and is appropriated on a continuing basis for the purposes of this section.
6. The agency may collect a reasonable administrative fee from the fund, project developers, applicants, or grant recipients. The origination fee assessed to grant recipients may not exceed five percent of the project award.
7. The housing finance agency shall maintain a register reflecting the number of housing units owned or master leased by cities, counties, school districts, or other employers of essential service workers. This register must also reflect those entities that are providing rent subsidies for their essential workers.

8. Upon request, the housing finance agency shall report to the industrial commission regarding the activities of the housing incentive fund.
9. At least once per biennium, the housing finance agency shall provide a report to the budget section of the legislative management regarding the activities of the housing incentive fund. The report must include the following:
 - a. The overall number of units owned, master leased, or subsidized by political subdivisions or other employers of essential service workers; and
 - b. A listing of projects approved and the number of units within those projects that provide housing for essential service workers.

SECTION 20. AMENDMENT. Section 54-18-19 of the North Dakota Century Code is amended and reenacted as follows:

54-18-19. Transfer of North Dakota mill and elevator profits to general fund.

The industrial commission shall transfer to the state general fund ~~fifty~~^{fifty-seven} percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

¹⁵ **SECTION 21. AMENDMENT.** Section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

57-62-02. Allocation of moneys in coal development fund

Moneys deposited in the coal development fund shall be apportioned monthly by the state treasurer as follows:

1. ~~Thirty~~^{Fifteen} percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal-impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter 15.1-36. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the school construction assistance loan fund. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15.1-36.

¹⁵ Section 57-62-02 was also amended by section 4 of House Bill No. 1005, chapter 4, section 1 of Senate Bill No. 2101, chapter 403, and section 8 of Senate Bill No. 2272, chapter 368.

2. Fifteen percent must be deposited in the lignite research fund for the purpose of developing advanced energy technology.
3. Seventy percent must be allocated to the coal-producing counties and must be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such monthly period. Allocations under subdivisions a and b must be apportioned by the state treasurer as follows:
 - a. If the tipple of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned according to this subdivision must be allocated as follows:
 - (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent must be paid to the county treasurer who shall deposit it in the county general fund to be used for general governmental purposes.
 - (3) Thirty percent must be apportioned by the state treasurer to school districts within the county on the average daily membership basis, as certified to the state treasurer by the county superintendent of schools.
 - b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in this subdivision. For purposes of this subdivision, the production limitation is three million eight hundred thousand tons [3447302.02 metric tons] through calendar year 1995, three million six hundred thousand tons [3265865.07 metric tons] in calendar years 1996 and 1997, and three million four hundred thousand tons [3084428.12 metric tons] in calendar years after 1997. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:
 - (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.

- (2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tippie of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tippie of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tippie of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tippie of the currently active coal mining operation and their assessed valuations.
- (3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tippie of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tippie of the currently active coal mining operation in the coal-producing county.
- (4) For the purposes of this subdivision:
 - (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
 - (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.
 - (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.

- (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
- (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.
- (5) The state treasurer shall allocate funds provided by legislative appropriation to cities, the county general fund, and school districts within a coal-producing county according to the allocation method provided in subdivision a in an amount to offset fifty percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county under this subdivision in the previous calendar year. The state treasurer shall make the allocation and distribute the funds, within the limits of legislative appropriations, under this paragraph during the first month of each calendar year. The state treasurer shall include in each biennial budget request the amounts estimated to be necessary for the biennium for purposes of this paragraph, based on the allocations under this subdivision in the most recent calendar years.

SECTION 22. AMENDMENT. Section 26 of chapter 14 of the 2015 Session Laws is amended and reenacted as follows:

SECTION 26. CONTINGENT FUNDING - BANK OF NORTH DAKOTA - NORTH DAKOTA FINANCIAL CENTER - EXEMPTION - LEGISLATIVE MANAGEMENT REPORT. The capital assets line item in subdivision 2 of section 1 of this Act includes \$17,000,000 from the assets of the Bank of North Dakota for the purpose of constructing a North Dakota financial center on a site adjacent to the existing building in which the Bank is located. The Bank may spend the funding only if the Bank's net income, reported in accordance with financial accounting standards board accounting standards, for calendar year 2015 exceeds \$125,000,000. The funding appropriated for this purpose is not subject to section 54-44.1-11 and any unexpended funds are available ~~during the biennium beginning July 1, 2017, and ending June 30, 2019~~through June 30, 2021. The Bank of North Dakota shall report to the legislative management and to the appropriations committees of the sixty-fifth legislative assembly on the use of the funding provided for the North Dakota financial center, including the amounts spent to date and the amounts anticipated to be continued into the 2017-19 biennium, and on the progress of the project.

SECTION 23. REPEAL. Section 54-17-41 of the North Dakota Century Code is repealed.

SECTION 24. EXEMPTION - INDUSTRIAL COMMISSION FUND. The amount appropriated to the industrial commission in the special funds appropriation line item in section 1 of chapter 14 of the 2015 Session Laws and transferred pursuant to section 6 of chapter 14 of the 2015 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the

industrial commission for administrative services rendered by the commission during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 25. EXEMPTION - LIGNITE RESEARCH GRANTS. The amount appropriated to the industrial commission from the general fund for lignite research grants in the grants line item in section 1 of chapter 14 of the 2015 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the industrial commission for lignite research grants during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 26. LEGISLATIVE INTENT - RENEWABLE ENERGY DEVELOPMENT FUND. It is the intent of the sixty-fifth legislative assembly that the industrial commission consider applications for funding from the renewable energy development fund for advanced energy technology development projects.

SECTION 27. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - LIGNITE MARKETING FEASIBILITY STUDY. The amount of \$4,500,000 from the lignite research fund, or so much of the amount as may be necessary, may be used for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and industry jobs or that will lead to increased development of lignite and its products and create new lignite industry jobs and economic growth for the general welfare of this state. Moneys appropriated pursuant to this section also may be used for the purpose of contracting for nonmatching studies and activities in support of the lignite vision 21 program; for litigation that may be necessary to protect and promote the continued development of lignite resources; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys not needed for the purposes stated in this section are available to the industrial commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

SECTION 28. PROHIBITION - NORTH DAKOTA FINANCIAL CENTER - BANK OF NORTH DAKOTA. The Bank of North Dakota may not construct a North Dakota financial center on a site adjacent to the existing building on which the Bank of North Dakota is located related to the funding provided in section 1 of chapter 14 of the 2015 Session Laws and identified in sections 2 and 26 of chapter 14 of the 2015 Session Laws until after June 30, 2019.

SECTION 29. LAKE BED SEDIMENTATION STUDY - REPORT TO THE LEGISLATIVE MANAGEMENT. During the 2017-18 interim, the industrial commission shall conduct a study in consultation with the game and fish department, the state department of health, the state water commission, and any other state agencies as necessary, regarding the feasibility of and appropriate jurisdiction for regulation of sediment studies and dredging operations from the beds of reservoirs that retain more than fifty acre-feet of surface water. The study must include consideration of best practices in other states, an outline of any proposed regulations, and a plan to implement a uniform permitting process. The industrial commission shall report to the legislative management by September 30, 2018, regarding the results and recommendations of the study.

SECTION 30. GAIN-SHARING PROGRAM STUDY - REPORT TO LEGISLATIVE MANAGEMENT. During the 2017-18 interim, the industrial

commission shall conduct a study in consultation with the North Dakota mill and elevator association regarding the gain-sharing program. The study must include consideration of the costs and benefits of the gain-sharing program, best practices in other milling operations, and the estimated fiscal impact of repealing or modifying the gain-sharing program. The industrial commission shall report to the legislative management by July 1, 2018, regarding the results and recommendations of the study.

SECTION 31. BANK OF NORTH DAKOTA EFFICIENCY STUDY - REPORT.

During the 2017-18 interim, the Bank of North Dakota shall conduct a study regarding potential efficiencies in operations. The Bank of North Dakota shall report to the appropriations committees of the sixty-sixth legislative assembly regarding the results and recommendations of the study.

SECTION 32. EXPIRATION DATE. Section 20 of this Act is effective through June 30, 2019, and after that date is ineffective.

SECTION 33. EMERGENCY. Section 28 of this Act is declared to be an emergency measure.

Approved May 1, 2017

Filed May 3, 2017

CHAPTER 40**SENATE BILL NO. 2015**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to provide appropriations to the department of human services for behavioral health services; to create and enact a new section to chapter 12-44.1 and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to management of inmate population, a community behavioral health plan as a term of parole or an alternative to incarceration, and prioritization of admission of inmates; to provide for legislative management oversight studies; to provide for a legislative management justice reinvestment oversight 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 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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Adult services	\$205,626,019	\$16,734,336	\$222,360,355
Youth services	<u>30,654,707</u>	<u>85,802</u>	<u>30,740,509</u>
Total all funds	\$236,280,726	\$16,820,138	\$253,100,864
Less estimated income	<u>33,236,706</u>	<u>5,527,454</u>	<u>38,764,160</u>
Total general fund	\$203,044,020	\$11,292,684	\$214,336,704
Full-time equivalent positions	836.29	9.00	845.29

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$2,155,572, of which \$2,016,105 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Security camera upgrade	\$202,500	\$0
Equipment	470,400	167,000
Extraordinary repairs	719,267	0
Information technology upgrades	150,000	0
DOCSTARS maintenance	150,000	0
License plate issue	4,900,000	0

Electronic medical records system	0	935,907
Justice reinvestment initiative	<u>0</u>	<u>500,000</u>
Total all funds	\$6,592,167	\$1,602,907
Less estimated income	<u>5,126,000</u>	<u>1,602,907</u>
Total general fund	\$1,466,167	\$0

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of corrections and rehabilitation shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES. There is appropriated from special funds derived from federal funds and other income, the sum of \$7,000,000, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing the community behavioral health program, for the biennium beginning July 1, 2017, and ending June 30, 2019. The department is authorized six full-time equivalent positions to implement the community behavioral health program.

SECTION 5. APPROPRIATION - REPORT TO LEGISLATIVE MANAGEMENT - DEPARTMENT OF HUMAN SERVICES.

1. 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 department of human services for the purposes of contracting with a public or private entity to create, initiate, and facilitate the implementation of a strategic plan to increase the availability of all types of behavioral health services in all regions of the state, for the biennium beginning July 1, 2017, and ending June 30, 2019.
2. During the 2017-18 interim, the department of human services and the contracting entity shall make annual reports to the legislative management on the status of the creation and implementation of this strategic plan, including recommendations regarding legislation needed for full implementation.

SECTION 6. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. The estimated income line item in section 1 of this Act includes \$935,907 of one-time funding from the strategic investment and improvements fund for an electronic medical records system.

SECTION 7. MISSOURI RIVER CORRECTIONAL CENTER - HOUSING UNIT PURCHASE. The appropriation in section 1 of this Act includes the sum of \$844,000 for the purchase of a thirty-six bed housing unit at the Missouri River correctional center.

SECTION 8. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Management of inmate population.

1. The governing body of a correctional facility, in cooperation with law enforcement, state's attorneys, and the judiciary in the judicial district in which the correctional facility is located, shall develop an inmate population plan to prioritize admissions and inmate retention based on the correctional facility's authorized budget.

2. The inmate population plan must take into consideration:
 - a. The governing body's authorized budget;
 - b. The inmate's offense;
 - c. Whether the inmate has been charged, adjudicated, or sentenced;
 - d. Whether the inmate presents a risk of flight or is a danger to others or self;
 - e. The inmate's medical needs and mental and behavioral health needs; and
 - f. Whether the inmate is subject to mandatory incarceration.
3. The inmate population plan must include alternatives to physical custody of individuals under charge or conviction of an offense. Potential alternatives to physical custody include:
 - a. Placement in a community setting;
 - b. Work release;
 - c. Home detention;
 - d. Electronic home detention;
 - e. Global positioning system monitoring;
 - f. Medical, psychiatric, and drug and alcohol treatment;
 - g. Employment;
 - h. Pretrial risk assessment; and
 - i. Pretrial supervision.
4. This section does not apply when there are exigent circumstances that affect a correctional facility's operations and inmate population, including acts of God and mass arrests.
5. The department of corrections and rehabilitation shall provide technical assistance relating to the implementation of this section to the governing body of a correctional facility upon request from the governing body.

SECTION 9. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Community behavioral health program - Reports to legislative management and governor.

1. The department of corrections and rehabilitation shall establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions, as a term and condition of parole under chapter 12-59, and as a sentencing alternative under section 12.1-32-02.

2. In developing the program under this section, the department of corrections and rehabilitation shall collaborate with the department of human services to:
 - a. Establish a referral and evaluation process for access to the program.
 - b. Establish eligibility criteria that includes consideration of recidivism risk and behavioral health condition severity.
 - c. Establish discharge criteria and processes, with a goal of establishing a seamless transition to postprogram services to decrease recidivism.
 - d. Develop program oversight, auditing, and evaluation processes that must include:
 - (1) Oversight of case management services through the department of human services;
 - (2) Outcome and provider reporting metrics; and
 - (3) Annual reports to the legislative management and the governor on the status of the program.
 - e. Establish a system through which:
 - (1) The department of human services:
 - (a) Contracts with and pays behavioral health service providers; and
 - (b) Supervises, supports, and monitors referral caseloads and the provision of services by contract behavioral health service providers.
 - (2) Contract behavioral health service providers accept all eligible referrals, provide individualized care delivered through integrated multidisciplinary care teams, and continue services on an ongoing basis until discharge criteria are met.
 - (3) Contract behavioral health service providers receive payments on a per-month per-referral basis. The payment schedule must be based on a pay-for-performance model that includes consideration of identified outcomes and the level of services required.
 - (4) Contract behavioral health service providers bill third-parties for services and direct payment to the general fund.
3. The department of human services may adopt rules as necessary to implement this program.

SECTION 10. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Prioritization of admission of inmates - Report to legislative management.

The department of corrections and rehabilitation may refuse to admit inmates sentenced to the physical custody of the department when the admission of inmates will exceed the maximum operational capacity of the penitentiary and its affiliated

facilities and result in the department exceeding its authorized legislative appropriation for contracting for housing inmates in other correctional facilities. For purposes of this section, maximum operational capacity of the department means the total number of inmates that may be imprisoned at the same time in the penitentiary and its affiliated facilities. The department shall develop a prison population management plan to prioritize admissions based on sentences and the availability of space in the penitentiary and its affiliated facilities. The department shall report annually to the legislative management on the prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing.

SECTION 11. LEGISLATIVE MANAGEMENT STUDY - CRIMINAL JUSTICE SYSTEM BEHAVIORAL HEALTH NEEDS. During the 2017-18 interim, the legislative management shall consider continuing its study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system which must include caseload data, any recognized savings to the department of corrections and rehabilitation, an overview of the training requirements for contract behavioral health service providers, and recommendations. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 12. LEGISLATIVE MANAGEMENT STUDY - TOMPKINS REHABILITATION CENTER. During the 2017-18 interim, the legislative management shall consider studying the operation, management, conditions, caseload, and physical plant of the Tompkins rehabilitation center at the state hospital. The study must include the potential transition of the Tompkins rehabilitation center, including the transfer of the building, employees, and supervision and management of all operations and caseload of the Tompkins rehabilitation center, from the department of human services and the state hospital to the department of corrections and rehabilitation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 13. DEPARTMENT OF CORRECTIONS AND REHABILITATION - YOUTH CORRECTIONAL CENTER STUDY - BUDGET SECTION REPORT. During the 2017-18 interim, the department of corrections and rehabilitation, in consultation with the department of human services, the protection and advocacy project, and the supreme court, shall study the potential for increased community-based treatment services for youth offenders, youth correctional center staffing requirements, and the efficiency and adequacy of the youth correctional center facilities. The study must consider the potential to raze and replace the current facilities at the youth correctional center. The department of corrections and rehabilitation shall report the results of the study to the budget section of the legislative management by December 31, 2018.

SECTION 14. JUSTICE REINVESTMENT OVERSIGHT COMMITTEE - REPORT TO THE LEGISLATIVE MANAGEMENT.

1. During the 2017-18 interim, the justice reinvestment oversight committee is created and composed of eight members as follows:
 - a. The governor's general counsel;

- b. The director of the department of human services;
 - c. The director of the behavioral health division of the department of human services;
 - d. The director of the department of corrections and rehabilitation;
 - e. The chief justice of the supreme court, or a designee of the chief justice;
 - f. The attorney general, or a designee of the attorney general;
 - g. One member of the house of representatives, appointed by the majority leader of the house of representatives; and
 - h. One member of the senate, appointed by the majority leader of the senate.
2. The committee shall study the implementation of justice reinvestment policies in the state and periodically report to the legislative management. The governor's office shall provide staff services to the committee.
 3. Before July 1, 2018, the committee shall report its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative management.

Approved April 20, 2017

Filed April 21, 2017

CHAPTER 41

SENATE BILL NO. 2016

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; to provide a statement of legislative intent; to provide for a legislative management study; to provide for a study by the office of management and budget; to provide an appropriation to the office of management and budget; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to job service North Dakota for the purpose of defraying the expenses of job service North Dakota, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$39,604,238	(\$12,448,672)	\$27,155,566
Operating expenses	13,479,157	(1,977,902)	11,501,255
Capital assets	20,000	100,000	120,000
Grants	5,404,326	54,245	5,458,571
Workforce 20/20	1,441,225	(1,441,225)	0
Reed Act - unemployment insurance	<u>12,407,000</u>	<u>(1,197,443)</u>	<u>11,209,557</u>
computer modernization			
Total all funds	\$72,355,946	(\$16,910,997)	\$55,444,949
Less estimated income	<u>70,467,866</u>	<u>(15,568,710)</u>	<u>54,899,156</u>
Total general fund	\$1,888,080	(\$1,342,287)	\$545,793
Full-time equivalent positions	237.76	(56.15)	181.61

SECTION 2. HEALTH INSURANCE INCREASES. The salaries and wages line item in section 1 of this Act includes the sum of \$421,951, of which \$2,827 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Oil and gas employment study	\$80,000	\$0
Virtual OneStop application	9,500	0
Renovation of Bismarck regional office	0	100,000
Total all funds	\$89,500	\$100,000
Total special funds	0	0
Total general fund	\$89,500	\$100,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. Job service North Dakota shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. APPROPRIATION - REED ACT FUNDS - UNEMPLOYMENT INSURANCE COMPUTER MODERNIZATION. The estimated income line item in section 1 of this Act includes \$11,209,557 from federal Reed Act funds made available to the state by the federal Reed Act distributions made in federal fiscal years 1957, 1958, 1999, and 2002, pursuant to section 903 of the federal Social Security Act. This sum, or so much of the sum as may be necessary, is for the purpose of developing a modernized unemployment insurance computer system, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. 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, 2017, and ending June 30, 2019.

SECTION 6. ESTIMATED INCOME - RENT REVENUE. The estimated income line item in section 1 of this Act includes \$750,000 of estimated rent revenue as a result of job service North Dakota leasing the Minot regional office and a portion of the Bismarck central office to other state agencies. Any revenue collected must be deposited in the job service North Dakota operating fund for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. ONE-TIME FUNDING - BISMARCK REGIONAL OFFICE RENOVATION - RELOCATION COSTS. Section 1 of this Act includes \$100,000 of one-time funding from the general fund, for defraying the expenses of job service North Dakota relocating from the Bismarck central office to the Bismarck regional office and for costs associated with renovations of the Bismarck regional office necessary for normal business operations for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 8. NEW JOBS TRAINING. During the biennium beginning July 1, 2017, and ending June 30, 2019, job service North Dakota may not award more than \$2,500,000 for new agreements related to the new jobs training program under chapter 52-02.1.

SECTION 9. LEGISLATIVE MANAGEMENT STUDY - JOB SERVICE NORTH DAKOTA PROPERTIES. During the 2017-18 interim, the legislative management shall consider studying office space cost and value of properties owned by job service North Dakota in Fargo, Rolla, Minot, and Bismarck with input from the office of management and budget. If job service North Dakota sells or leases any property identified in this section before July 1, 2017, the property may not be included in the study. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 10. APPROPRIATION - STUDY AND LEASE OF JOB SERVICE NORTH DAKOTA BISMARCK PROPERTY - JOB SERVICE NORTH DAKOTA RELOCATION - BUDGET SECTION REPORT. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of contracting with a qualified consultant by June 30, 2017, to conduct a study of the most cost-effective use for the job service North Dakota property Parcel# 0485-010-045; Lot# N.50; of L 3, ALL 4-6, ALL L 17-19;

Block# 10; Addition - TIBESAR's first in the city of Bismarck, Burleigh County, North Dakota. The funding appropriated in this section is considered one-time funding. The office of management and budget, in consultation with the attorney general and job service North Dakota, shall determine the most cost-effective use of the property described in this section. The term "cost-effective" means savings to the general fund, including any costs associated with relocation, rental costs related to the job service North Dakota Bismarck regional office, and remodeling of office space for job service North Dakota and the attorney general's office. The office of management and budget shall complete its study by September 30, 2017. If the office of management and budget determines it is more cost-effective for the attorney general's office to lease a portion of the property described in this section, job service North Dakota shall lease the number of square feet that is determined the most cost-effective, up to seventy-five percent of the building, to the attorney general, no later than March 31, 2018. Job service North Dakota shall continue to occupy at least twenty-five percent of the building. As a result of the study provided for in this section and upon the lease of a portion of the property described in this section, job service North Dakota may relocate a portion of its central office operations to another suitable location. The office of management and budget shall report the findings and results of its study to the budget section prior to the lease of the job service North Dakota central office building and subsequent relocation of job service North Dakota to the Bismarck regional office or other office space.

SECTION 11. LEGISLATIVE INTENT. If the attorney general's office relocates a portion of its operations to the job service North Dakota central office, it is the intent of the sixty-fifth legislative assembly any funds appropriated to lease office space it is vacating are no longer appropriated for said purpose.

SECTION 12. EMERGENCY. Section 10 of this Act is declared to be an emergency measure.

Approved May 1, 2017

Filed May 3, 2017

CHAPTER 42

SENATE BILL NO. 2017

(Appropriations Committee)

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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,195,284	(\$3,434)	\$1,191,850
Operating expenses	<u>1,756,327</u>	<u>(29,543)</u>	<u>1,726,784</u>
Total special funds	\$2,951,611	(\$32,977)	\$2,918,634
Full-time equivalent positions	5.00	0.00	5.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$13,273 from special funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

Approved April 12, 2017

Filed April 12, 2017

CHAPTER 43

SENATE BILL NO. 2018

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide exemptions; to provide for transfers; to provide for a report; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of commerce for the purpose of defraying the expenses of the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$13,015,999	(\$20,211)	\$12,995,788
Operating expenses	16,384,623	(907,001)	15,477,622
Grants	48,134,795	6,375,621	54,510,416
Discretionary funds	784,152	1,415,848	2,200,000
Flood impact grants/loans	0	5,201,752	5,201,752
Agricultural products utilization commission	3,118,611	34,304	3,152,915
North Dakota trade office	2,556,694	(556,694)	2,000,000
Partner programs	2,173,829	(233,984)	1,939,845
Entrepreneurship grants and vouchers	<u>1,500,000</u>	<u>750,000</u>	<u>2,250,000</u>
Total all funds	\$87,668,703	\$12,059,635	\$99,728,338
Less estimated income	<u>53,809,604</u>	<u>14,576,054</u>	<u>68,385,658</u>
Total general fund	\$33,859,099	(\$2,516,419)	\$31,342,680
Full-time equivalent positions	69.40	(3.00)	66.40

SECTION 2. HEALTH INSURANCE INCREASE. The salaries line item in section 1 of this Act includes the sum of \$172,554, of which \$135,102 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Workforce enhancement fund	\$960,069	\$0
Flood impact grants/loans	12,859,869	5,201,752
Research North Dakota	4,353,542	0
Unmanned aircraft system	2,662,105	2,000,000
Base retention grants	1,500,000	600,000

Tourism large infrastructure grants	586,000	0
Enhanced use lease grant	7,500,000	3,000,000
Child care facility grants	2,131,267	0
Homeless shelter grants	1,500,000	0
Tribal community college grants	2,837,130	0
Workforce recruitment campaign	300,000	0
Tourism midwest markets	848,481	0
Entrepreneurship grants and vouchers	1,716,830	0
Tourism international	227,836	0
Educators and industry externships	40,000	0
Total all funds	\$40,023,129	\$10,801,752
Less estimated income	21,359,869	9,801,752
Total general fund	\$18,663,260	\$1,000,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of commerce shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. EXEMPTION. The amount appropriated for the agricultural products utilization commission in section 1 of chapter 18 of the 2015 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, 2017, and ending June 30, 2019.

SECTION 5. EXEMPTION. The amount appropriated for the discretionary funds line item in section 1 of chapter 18 of the 2015 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, 2017, and ending June 30, 2019.

SECTION 6. EXEMPTION. Of the amount appropriated for the unmanned aircraft systems program in section 1 of chapter 18 of the 2015 Session Laws up to \$1,000,000 is not subject to section 54-44.1-11 and unexpended funds from this amount are available and may be spent during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. TRANSFER - INTERNSHIP FUND. The office of management and budget shall transfer \$950,000 of the amount appropriated in the operating expenses line item in section 1 of this Act to the internship fund for the purpose of administering the operation intern program, for the period beginning with the effective date of this Act and ending June 30, 2019.

SECTION 8. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - BASE RETENTION GRANT PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$600,000 from the strategic investment and improvements fund for a base retention grant program to be developed by the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019. The grant program must award direct grants and not cost reimbursement grants. The department may award grants of \$200,000 to each community with an air force base or air national guard facilities.

SECTION 9. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - UNMANNED AIRCRAFT SYSTEMS PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$2,000,000 from the strategic investment and improvements fund for operations of the unmanned aircraft systems test site, for the biennium beginning July 1, 2017, and ending

June 30, 2019. The department of commerce shall consult with the aeronautics commission regarding test site operational costs and support services and best practices related to the unmanned aircraft systems test site.

SECTION 10. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ENHANCED USE LEASE GRANT PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$3,000,000, of which \$1,000,000 is from the general fund and \$2,000,000 is from the strategic investment and improvements fund for an enhanced use lease grant program, for the biennium beginning July 1, 2017, and ending June 30, 2019. Grants must be awarded for initiatives related to the unmanned aircraft system industry in North Dakota, including for the purposes of infrastructure, research, development, the creation of software, and the purchase of equipment benefiting the unmanned aircraft system. The department of commerce shall require grant recipients to provide matching funds in the form of cash, property, or in-kind consideration, totaling \$1,000,000 for the grants awarded under this program.

SECTION 11. TRADE OFFICE - MATCHING FUND REQUIREMENT. The North Dakota trade office line item and the general fund appropriation in section 1 of this Act include \$2,000,000 of funding relating to the North Dakota trade office. The department of commerce may spend sixty percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent the North Dakota trade office provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2017, and ending June 30, 2019. 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 12. ENTREPRENEURSHIP GRANTS AND VOUCHER PROGRAM - EXEMPTION. Section 1 of this Act includes the sum of \$2,250,000, of which \$600,000 is from the general fund and \$1,650,000 is from special funds, for an entrepreneurship grants and voucher program to be developed and administered by the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the amount appropriated, \$900,000 is to be distributed equally to entrepreneurial centers located in Bismarck, Fargo, and Grand Forks, \$300,000 to an organization that provides workplace safety, and \$300,000 for biotechnology grants. The department shall establish guidelines to provide grants to entrepreneurial centers certified by the department. The department also shall establish guidelines to award vouchers to entrepreneurs to procure business development assistance from certified entrepreneurial centers or to provide grants to entrepreneurs working with an entrepreneurial center. The amount appropriated for entrepreneurship grants in section 1 of this Act is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 13. ENERGY AND ENVIRONMENTAL RESEARCH CENTER GRANT - MATCHING REQUIREMENT. The grants line item in section 1 of this Act includes \$500,000 from the research North Dakota fund which the department of commerce shall provide as a grant to the energy and environmental research center at the university of North Dakota. The grant must be utilized for economic development and diversification of the North Dakota economy and may be provided only to the extent the energy and environmental research center provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. ESTIMATED INCOME - RESEARCH NORTH DAKOTA FUND.

Notwithstanding section 54-65-08, the estimated income line item in section 1 of this Act includes \$3,500,000 from the research North Dakota fund to the department of commerce for department programs. Of this amount, \$500,000 is for the North Dakota tourism program, \$1,000,000 is for discretionary funds, \$1,500,000 is for entrepreneurship grants and vouchers, and \$500,000 is for providing a grant to the energy and environmental research center at the university of North Dakota.

SECTION 15. TRANSFER - RESEARCH NORTH DAKOTA FUND TO THE GENERAL FUND.

Notwithstanding section 54-65-08, the office of management and budget shall transfer \$4,000,000 from the research North Dakota fund to the general fund, during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 16. EMERGENCY. Funding of \$950,000 in the operating expenses line item in sections 1 and 7 of this Act, relating to the operation intern program, are declared to be an emergency measure.

Approved May 1, 2017

Filed May 3, 2017

CHAPTER 44

SENATE BILL NO. 2019

(Appropriations Committee)

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, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,763,504	(\$63,529)	\$4,699,975
Operating expenses	1,267,340	(26,751)	1,240,589
Grants	31,240,290	1,593,066	32,833,356
Grants - postsecondary	661,113	(364,906)	296,207
Adult farm management	660,438	(80,616)	579,822
Workforce training	<u>2,803,500</u>	<u>(803,500)</u>	<u>2,000,000</u>
Total all funds	\$41,396,185	\$253,764	\$41,649,949
Less estimated income	<u>9,697,887</u>	<u>2,395,779</u>	<u>12,093,666</u>
Total general fund	\$31,698,298	(\$2,142,015)	\$29,556,283
Full-time equivalent positions	26.50	(2.00)	24.50

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$61,059 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
School district and area center grants	\$0	\$2,427,000
Marketplace for kids	0	300,000
Total all funds	\$0	\$2,727,000
Less estimated income	0	2,477,000
Total general fund	\$0	\$250,000

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of career and technical education shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of

this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. ESTIMATED INCOME - FOUNDATION AID STABILIZATION FUND.

The estimated income line item in section 1 of this Act includes \$2,477,000 from the foundation aid stabilization fund for providing grants to school districts and area centers. Of this amount, \$50,000 is for the marketplace for kids program.

SECTION 5. WORKFORCE TRAINING. The workforce training line item in section 1 of this Act includes \$2 million from the general fund for the purpose of providing workforce training grants for the biennium beginning July 1, 2017, and ending June 30, 2019. Of this amount, \$1 million is to be distributed equally to Bismarck state college, lake region state college, Williston state college, and the North Dakota state college of science. The department of career and technical education shall award the remaining \$1 million of workforce training grants based on job training needs throughout North Dakota and may consider applications from tribally controlled community colleges when determining these grant awards. Tribally controlled community colleges must collaborate with at least one of the four higher education institutions listed in this section when submitting applications for workforce training grants.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 45

SENATE BILL NO. 2020

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to amend and reenact sections 4-05.1-05 and 4-08-10 of the North Dakota Century Code, relating to main research center experiment station and extension service position adjustments; to provide for a legislative management study; to provide for budget section reports; to provide for a report to the appropriations committees; to provide an exemption; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the 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, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Extension service	\$52,517,908	(\$1,314,419)	\$51,203,489
Soil conservation committee	<u>1,133,362</u>	<u>(41,842)</u>	<u>1,091,520</u>
Total all funds	\$53,651,270	(\$1,356,261)	\$52,295,009
Less estimated income	<u>25,826,708</u>	<u>819,981</u>	<u>26,646,689</u>
Total general fund	\$27,824,562	(\$2,176,242)	\$25,648,320
Full-time equivalent positions	263.91	(10.93)	252.98

Subdivision 2.

NORTHERN CROPS INSTITUTE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Northern crops institute	\$3,712,202	(\$69,481)	\$3,642,721
Total all funds	\$3,712,202	(\$69,481)	\$3,642,721
Less estimated income	<u>1,747,735</u>	<u>8,095</u>	<u>1,755,830</u>
Total general fund	\$1,964,467	(\$77,576)	\$1,886,891
Full-time equivalent positions	12.00	(0.20)	11.80

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

	Base Level	Adjustments or Enhancements	Appropriation
Upper great plains transportation institute	<u>\$22,076,448</u>	<u>\$283,794</u>	<u>\$22,360,242</u>
Total all funds	\$22,076,448	\$283,794	\$22,360,242
Less estimated income	<u>18,175,657</u>	<u>641,411</u>	<u>18,817,068</u>
Total general fund	\$3,900,791	(\$357,617)	\$3,543,174
Full-time equivalent positions	54.98	(11.10)	43.88

Subdivision 4.

MAIN RESEARCH CENTER

	Base Level	Adjustments or Enhancements	Appropriation
Main research center	<u>\$110,529,780</u>	<u>(\$1,887,537)</u>	<u>\$108,642,243</u>
Total all funds	\$110,529,780	(\$1,887,537)	\$108,642,243
Less estimated income	<u>56,948,525</u>	<u>2,136,303</u>	<u>59,084,828</u>
Total general fund	\$53,581,255	(\$4,023,840)	\$49,557,415
Full-time equivalent positions	353.85	(17.73)	336.12

Subdivision 5.

BRANCH RESEARCH CENTERS

	Base Level	Adjustments or Enhancements	Appropriation
Dickinson research extension center	\$6,996,678	(\$171,127)	\$6,825,551
Central grasslands research extension center	3,531,779	(108,155)	3,423,624
Hettinger research extension center	5,086,767	(111,634)	4,975,133
Langdon research extension center	3,045,836	(81,229)	2,964,607
North central research extension center	5,044,213	(90,561)	4,953,652
Williston research extension center	5,267,400	1,351,490	6,618,890
Carrington research extension center	<u>9,328,093</u>	<u>(152,602)</u>	<u>9,175,491</u>
Total all funds	\$38,300,766	\$636,182	\$38,936,948
Less estimated income	<u>19,817,130</u>	<u>1,964,561</u>	<u>21,781,691</u>
Total general fund	\$18,483,636	(\$1,328,379)	\$17,155,257
Full-time equivalent positions	113.94	(3.65)	110.29

Subdivision 6.

AGRONOMY SEED FARM

	Base Level	Adjustments or Enhancements	Appropriation
Agronomy seed farm	<u>\$1,521,007</u>	<u>\$15,122</u>	<u>\$1,536,129</u>

Total special funds	\$1,521,007	\$15,122	\$1,536,129
Full-time equivalent positions	3.00	0.00	3.00

Subdivision 7.

BILL TOTAL

	Base Level	Adjustments or Enhancements	Appropriation
Grand total general fund	\$105,754,711	(\$7,963,654)	\$97,791,057
Grand total other funds	<u>124,036,762</u>	<u>5,585,473</u>	<u>129,622,235</u>
Grand total all funds	\$229,791,473	(\$2,378,181)	\$227,413,292

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$2,141,727, of which \$1,268,815 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Agronomy laboratories	\$150,000	\$0
Rural leadership project	141,252	0
Seed cleaning plants	4,408,224	1,500,000
Upper great plains transportation institute road study	628,823	0
Junior master gardener program	12,500	15,000
Veterinary diagnostic laboratory	18,000,000	0
Dust issues technical support	100,000	0
Land purchase - Langdon	350,000	0
Flooded lands study	67,952	0
Road and bridge asset management system	<u>0</u>	<u>300,000</u>
Total all funds	\$23,858,751	\$1,815,000
Total other funds	<u>21,325,000</u>	<u>1,700,000</u>
Total general fund	\$2,533,751	\$115,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The upper great plains transportation institute, main and branch research centers, and North Dakota state university extension service shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. ADDITIONAL INCOME - APPROPRIATION. In addition to the amount included in the grand total other funds appropriation line item in section 1 of this Act, any other income, including funds from federal acts, private grants, gifts, and donations, or from other sources received by the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, except as otherwise provided by law, is appropriated for the purpose designated in the act, grant, gift, or donation, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. AMENDMENT. Section 4-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-05. North Dakota state university main research center position adjustments - Budget section report.

The North Dakota state university main research center must be located on the campus of North Dakota state university of agriculture and applied science. The center is the administrative location of the agricultural experiment station. The center shall conduct research and coordinate all research activities of the agricultural experiment station. The research must have, as a purpose, the development and dissemination of technology important to the production and utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must provide for an enhancement of the quality of life, sustainability of production, and protection of the environment. Subject to the availability of funds, the station director may adjust or increase full-time equivalent positions in order to carry out activities to accomplish the mission of the agricultural experiment station. Twelve-month employees whose employment is not limited in duration must accrue leave pursuant to provisions of section 54-06-14. All full or partial positions must be separate from North Dakota state university. Annually, the station director shall report to the office of management and budget and to the budget section any adjustments or increases made pursuant to this section. The center may conduct baseline research, including production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops. The center may collect feral hemp seed stock and develop appropriate adapted strains of industrial hemp which contain less than three-tenths of one percent tetrahydrocannabinol in the dried flowering tops. The agriculture commissioner shall monitor the collection of feral hemp seed stock and industrial hemp strain development and shall certify appropriate stocks for licensed commercial cultivation.

SECTION 6. AMENDMENT. Section 4-08-10 of the North Dakota Century Code is amended and reenacted as follows:

4-08-10. Extension agent to submit monthly account of expenditures - Position adjustments - Budget section report.

The extension agent shall submit monthly an accurate itemized account of all expenditures incurred by the agent in the regular conduct of duties to the North Dakota state university extension service for examination and audit. When charges are made by an extension agent for money expended in the performance of official duties, all items of one dollar or more expended and charged for must be covered by a subvoucher or receipt that must be signed by the person to whom the money was paid. The subvoucher or receipt must show at what place, on what date, and for what the money expended was paid. The extension agent shall forward the subvouchers or receipts with the bill, claim, account, or demand against the county. When charges are made for transportation expenses, they may not exceed the amounts provided by section 11-10-15, and must be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose thereof, verified by affidavit. The account must be transmitted and recommended for payment by the North Dakota state university extension service which shall audit the same and which may approve or disallow any expense item therein. The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota state university extension service subject to the supervision of the state board of higher education. Funds appropriated to the North Dakota state university extension service may not be commingled with funds appropriated to North Dakota state university. An appropriation request to defray

expenses of the North Dakota state university extension service must be separate from an appropriation request to defray expenses of North Dakota state university. Subject to the availability of funds, the director of the North Dakota state university extension service may adjust or increase full-time equivalent positions in order to carry out activities to accomplish the mission of the extension service. Twelve-month employees whose employment is not limited in duration must accrue leave pursuant to provisions of section 54-06-14. All full- or part-time positions must be separate from North Dakota state university. Annually, the director of the North Dakota state university extension service shall report to the office of management and budget and to the budget section any adjustments or increases made pursuant to this section.

SECTION 7. DICKINSON RESEARCH EXTENSION CENTER - MINERAL RIGHTS INCOME. The Dickinson research extension center may spend up to \$755,000 of revenues received during the 2017-19 biennium from mineral royalties, leases, or easements for ongoing operational expenses. Any revenues received in excess of \$755,000 may be spent only for one-time expenditures for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 8. WILLISTON RESEARCH EXTENSION CENTER - MINERAL RIGHTS INCOME - REPORT. The Williston research extension center shall report to the appropriations committees of the sixty-sixth legislative assembly on amounts received and spent from mineral royalties, leases, or easements in the biennium beginning July 1, 2015, and ending June 30, 2017, and the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 9. 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 10. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS. The state board of higher education may adjust or increase full-time equivalent positions as needed for the entities in section 1 of this Act, subject to availability of funds. All full-time or part-time positions must be separate from North Dakota state university. Annually, the board shall report to the office of management and budget and to the budget section any adjustments made pursuant to this section.

SECTION 11. UNEXPENDED GENERAL FUND - EXCESS INCOME. Any unexpended general fund appropriation authority to and any excess income received by entities listed in section 1 of this Act are not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or revenues are available and may be expended by those entities, during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 12. EXEMPTION. The amounts appropriated for the veterinary diagnostic laboratory and the seed cleaning plants contained in subdivision 4 of section 1 of chapter 20 of the 2015 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, 2017, and ending June 30, 2019.

SECTION 13. UPPER GREAT PLAINS TRANSPORTATION INSTITUTE - ROAD AND BRIDGE ASSET MANAGEMENT SYSTEM MATCHING FUNDS. Subdivision 3 of section 1 of this Act includes \$100,000 from the general fund for a road and bridge asset management system which may be spent only to the extent the upper great

plains transportation institute provides two dollars of matching funds from nonstate sources for each one dollar provided from the general fund for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. LEGISLATIVE MANAGEMENT STUDY - STATE SOIL CONSERVATION COMMITTEE. During the 2017-18 interim, the legislative management shall study the state soil conservation committee. The study must include a review of the duties, responsibilities, and related costs and efficiencies of the committee and related North Dakota state university extension service staff, the needs of the soil conservation districts, and the necessity to continue the state soil conservation committee. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 15. STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION - NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE STUDY - BUDGET SECTION REPORT. During the 2017-18 interim, the state board of agricultural research and education, in consultation with the governor's office, shall study the duties and responsibilities of the North Dakota state university extension service. The study must include a review of the mission, existing programs, the efficiency and effectiveness of the delivery methods for existing programs, and potential program changes. The state board of agricultural research and education shall report its findings and recommendations to increase the efficiency and effectiveness of the North Dakota state university extension service to the budget section of the legislative management by March 31, 2018.

SECTION 16. EXPIRATION DATE. Sections 5 and 6 of this Act are effective through June 30, 2019, and after that date are ineffective.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 46

SENATE BILL NO. 2021

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the information technology department; to provide appropriations to certain agencies for an electronic payment processing system; to authorize borrowing authority; to provide for transfers; to provide for a report; to create and enact sections 15-19-01.1 and 15-19-02.1 of the North Dakota Century Code, relating to the centers for distance education; to amend and reenact subsection 1 of section 37-17.3-02.2, section 54-59-31, and subsection 1 of section 54-59-34 of the North Dakota Century Code, relating to the statewide interoperability executive committee, certified electronic health information systems, and the statewide longitudinal data system; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the information technology department for the purpose of defraying the expenses of the information technology department, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$58,113,215	\$1,246,557	\$59,359,772
Operating expenses	70,927,060	(999,062)	69,927,998
Capital assets	8,850,000	(555,000)	8,295,000
Centers for distance education	9,091,690	(12,574)	9,079,116
Statewide longitudinal data system	5,500,661	(1,190,100)	4,310,561
Educational technology council	1,655,947	(534,475)	1,121,472
Edutech	9,052,048	700,719	9,752,767
K-12 wide area network	4,880,862	(346,584)	4,534,278
Geographic information system	1,192,978	(45,262)	1,147,716
Health information technology office	5,354,633	43,516,009	48,870,642
Statewide interoperability radio network	<u>0</u>	<u>13,700,000</u>	<u>13,700,000</u>
Total all funds	\$174,619,094	\$55,480,228	\$230,099,322
Less estimated income	<u>151,213,039</u>	<u>58,353,949</u>	<u>209,566,988</u>
Total general fund	\$23,406,055	(\$2,873,721)	\$20,532,334
Full-time equivalent positions	350.30	(6.00)	344.30

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$926,470, of which \$173,819 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted

for the 2015-17 biennium and the 2017-19 one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Educational technology council grants	\$912,060	\$0
Statewide longitudinal data system	358,280	0
Statewide radio coordination	1,401,750	0
Health data study	500,000	0
Electronic payment processing system	0	375,000
Health information network expansion	0	<u>43,555,133</u>
Total all funds	\$3,172,090	\$43,930,133
Less estimated income	500,000	<u>43,930,133</u>
Total general fund	\$2,672,090	\$0

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The information technology department shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. TRANSFERS. Notwithstanding section 54-16-04, the director of the office of management and budget shall make transfers of funds between line items in section 1 of this Act for the information technology department as may be requested by the chief information officer as determined necessary for the development and implementation of information technology projects.

SECTION 5. Section 15-19-01.1 of the North Dakota Century Code is created and enacted as follows:

15-19-01.1. Distance education courses - Course lists to school districts - Notification.

The center for distance education shall provide by December thirty-first of each year, a complete list of courses offered by the center to all school districts. Each school district shall notify its students and their parents or guardians of the complete list of courses offered and the school district's policies for course selection and related fees.

SECTION 6. Section 15-19-02.1 of the North Dakota Century Code is created and enacted as follows:

15-19-02.1. Distance education clearinghouse.

The director of the center for distance education shall establish a clearinghouse for online courses delivered to North Dakota schools for the purpose of providing:

1. A list of the online courses and providers for all North Dakota schools to access.
2. Awareness of online courses available in new and emerging careers.
3. A list of comparative prices for online courses and other online services.
4. Awareness of the differences between technological innovation and learning innovation.

¹⁶ **SECTION 7. AMENDMENT.** Subsection 1 of section 37-17.3-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The statewide interoperability executive committee consists of:
 - a. The director of state radio or a designee;
 - b. The director of the division of homeland security or a designee;
 - c. The superintendent of the highway patrol or a designee;
 - d. The adjutant general or a designee;
 - e. The director of the department of transportation or a designee;
 - f. A representative of the North Dakota sheriff's and deputies association;
 - g. A representative of the North Dakota emergency managers association;
 - h. A representative of the North Dakota fire chiefs association;
 - i. A representative of the North Dakota emergency medical services association;
 - j. A representative of the North Dakota police chiefs association;
 - k. A representative of the North Dakota peace officers association;
 - l. A representative of the North Dakota 911 association; and
 - m. The North Dakota chief information officer or a designee;
 - n. The North Dakota Indian affairs commission executive director or a designee; and
 - o. One member of the North Dakota house of representatives and one member of the North Dakota senate appointed by the legislative management.

SECTION 8. AMENDMENT. Section 54-59-31 of the North Dakota Century Code is amended and reenacted as follows:

54-59-31. Certified electronic health records systems.

1. 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.
2. Subsection 1 does not apply if:

¹⁶ Section 37-17.3-02.2 was also amended by section 2 of House Bill No. 1178, chapter 247, and section 1 of Senate Bill No. 2050, chapter 245.

- a. The office of the national coordinator for health information technology does not require certification of the electronic health record system for that type of provider; or
- b. The North Dakota health information technology director waives the certification requirement.

SECTION 9. AMENDMENT. Subsection 1 of section 54-59-34 of the North Dakota Century Code is amended and reenacted as follows:

1. The statewide longitudinal data system committee shall manage a statewide longitudinal data system that:
 - a. Provides for the dissemination of management information to stakeholders and partners of state education, training, and employment systems; and
 - b. Is required to provide on an annual basis to education and workforce development programs, to the extent permitted by federal law, the wage record interchange system 2 data sharing agreement and the state wage interchange system data sharing agreement and state performance reports that measure the aggregate outcomes of participants in the workforce and continuing education programs, including private workforce and education programs that request the reports; and
 - c. Uses data from educational and workforce systems as central sources of statewide longitudinal data.

SECTION 10. LOAN AUTHORIZATION - APPROPRIATION - ELECTRONIC PAYMENT PROCESSING SYSTEM. The state agencies named in this section may borrow from the Bank of North Dakota, the amounts listed below, or so much of the amounts as may be necessary, which are appropriated to the respective agency for the purpose of defraying the expenses of implementing a new electronic payment system for the biennium beginning July 1, 2017, and ending June 30, 2019.

<u>Agency</u>	<u>Amount</u>
Department of transportation	\$147,000
Secretary of state's office	93,000
Parks and recreation department	42,000
Game and fish department	36,000
Workforce safety and insurance	36,000
Highway patrol	21,000
Total	\$375,000

SECTION 11. LOAN REPAYMENT - APPROPRIATION - ELECTRONIC PAYMENT PROCESSING SYSTEM. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from additional revenue received as a result of the implementation of a new electronic payment processing system to the agencies named below for the purpose of repaying the Bank of North Dakota loans authorized in section 10 of this Act, plus interest for the biennium beginning July 1, 2017, and ending June 30, 2019.

<u>Agency</u>	<u>Amount</u>
Department of transportation	\$159,000
Secretary of state's office	101,000
Parks and recreation department	46,000

Game and fish department	39,000
Workforce safety and insurance	39,000
Highway patrol	<u>23,000</u>
Total	\$407,000

SECTION 12. LEGISLATIVE INTENT - STATE GOVERNMENT EFFICIENCIES.

It is the intent of the sixty-fifth legislative assembly that during the 2017-18 interim, the governor achieve efficiencies and budgetary savings within the information technology department and other state agencies through the use of innovative ideas and solutions relating to information technology and related services. It is also the intent of the sixty-fifth legislative assembly that the governor submit proposed legislation necessary to implement any ideas and solutions for state government efficiencies and budgetary savings which cannot be implemented during the 2017-18 interim to the sixty-sixth legislative assembly.

Approved April 25, 2017

Filed April 25, 2017

CHAPTER 47

SENATE BILL NO. 2022

(Appropriations Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the commission on legal counsel for indigents for the purpose of defraying the expenses of the commission on legal counsel for indigents, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Commission on legal counsel for indigents	\$18,889,823	\$1,013,800	\$19,903,623
Total all funds	\$18,889,823	\$1,013,800	\$19,903,623
Less estimated income	<u>1,906,914</u>	<u>12,833</u>	<u>1,919,747</u>
Total general fund	\$16,982,909	\$1,000,967	\$17,983,876
Full-time equivalent positions	40.00	0.00	40.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$114,999, of which \$112,215 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium.

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Desktop support	\$122,275	\$0
Contract service fees	<u>200,000</u>	<u>0</u>
Total all funds	\$322,275	\$0
Less estimated income	<u>200,000</u>	<u>0</u>
Total general fund	\$122,275	\$0

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 48

SENATE BILL NO. 2023

(Appropriations Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the North Dakota racing commission for the purpose of defraying the expenses of the North Dakota racing commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Racing commission	\$546,551	(\$4,373)	\$542,178
Total all funds	\$546,551	(\$4,373)	\$542,178
Less estimated income	158,730	3,827	162,557
Total general fund	\$387,821	(\$8,200)	\$379,621
Full-time equivalent positions	2.00	0.00	2.00

SECTION 2. HEALTH INSURANCE INCREASE. The racing commission line item in section 1 of this Act includes the sum of \$5,309 from the general fund for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 49

SENATE BILL NO. 2025

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of veterans' affairs for the purpose of defraying the expenses of the department of veterans' affairs, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Veterans' affairs	\$1,379,982	(\$211,967)	\$1,168,015
Agent orange	50,000	(50,000)	0
State approving agency	288,018	(16,020)	271,998
Grants - transportation program	0	1,719,520	1,719,520
Transport vans	<u>0</u>	<u>37,200</u>	<u>37,200</u>
Total all funds	\$1,718,000	\$1,478,733	\$3,196,733
Less estimated income	<u>288,018</u>	<u>1,803,553</u>	<u>2,091,571</u>
Total general fund	\$1,429,982	(\$324,820)	\$1,105,162
Full-time equivalent positions	9.00	(2.00)	7.00

SECTION 2. HEALTH INSURANCE INCREASES. The salaries and wages line item in section 1 of this Act includes the sum of \$18,581, of which \$15,431 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Service dogs	\$50,000	\$0
Desktop support hardware	26,895	0
Transport vans	0	18,600
Total general fund	\$76,895	\$18,600

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of veterans' affairs shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. APPROPRIATION - SERVICE DOGS. 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 training up to four service dogs to assist North Dakota veterans with post traumatic stress disorder, for the biennium beginning July 1, 2017, and ending June 30, 2019.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 50

SENATE BILL NO. 2174

(Senators Wardner, Heckaman)
(Representatives Carlson, Mock)

AN ACT to provide borrowing authority and an appropriation to the office of the adjutant general; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BORROWING AUTHORITY - APPROPRIATION - ADJUTANT GENERAL. The office of the adjutant general may borrow the sum of \$8,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota access pipeline for the period beginning with the effective date of this Act and ending June 30, 2019. The office of the adjutant general shall request from the legislative assembly a deficiency appropriation sufficient for the repayment of the amount borrowed plus interest.

SECTION 2. BORROWING AUTHORITY - APPROPRIATION - ADJUTANT GENERAL. The office of the adjutant general may borrow the sum of \$3,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for the purpose of providing a grant to a county that has experienced an emergency related to protest activities, for the period beginning with the effective date of this Act and ending June 30, 2019. Notwithstanding any other provision of law, the proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of providing a grant to a county that has experienced an emergency related to protest activities, for the period beginning with the effective date of this Act and ending June 30, 2019. The grant funds must be used to reimburse the county for extraordinary personnel, equipment, and materials expenditures related to the protest activities which are not otherwise eligible for reimbursement by the state or federal government. The office of the adjutant general shall request from the legislative assembly a deficiency appropriation sufficient for the repayment of the amount borrowed plus interest.

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

Approved January 25, 2017

Filed January 25, 2017

CHAPTER 51

SENATE BILL NO. 2191

(Senators Armstrong, Nelson)
(Representatives Heinert, Delmore)

AN ACT to provide an appropriation to the attorney general for grants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. There is appropriated out of any moneys in the strategic investment and improvements 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 attorney general for the purpose of providing grants through the domestic violence and rape crisis program for community-based or hospital-based sexual assault examiner programs, for the biennium beginning July 1, 2017, and ending June 30, 2019. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-sixth legislative assembly on the use of the funds received and the outcomes of its program. The attorney general shall report to the sixty-sixth legislative assembly on the number of nurses trained, the number and location of nurses providing services related to sexual assault nurse examiner programs, and documentation of collaborative efforts to assist victims which includes nurses, the hospital or clinic, law enforcement, states attorneys, and sexual assault advocates. Grant funds awarded under this section may not be used for salaries for nurses.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 52

SENATE BILL NO. 2196

(Senators Laffen, Cook, G. Lee, Robinson)
(Representatives Sanford, Delmore)

AN ACT to authorize this issuance of revenue bonds for the purchase of land and construction of an integrated carbon plant at Valley City state university; to provide an appropriation; to provide for a report to the budget section; to provide for a report to the sixty-sixth legislative assembly; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BOND ISSUANCE - AUTHORIZATION. The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of the project 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, 2019. Evidences of indebtedness issued pursuant to this section are not a general obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of indebtedness. The evidences of indebtedness may be issued and the proceeds are appropriated in section 2 of this Act for the following project:

Valley City state university - Construction of an integrated carbon plant including the purchase of land	\$22,500,000
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SECTION 2. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from bond proceeds and other income, to Valley City state university under the supervision of the state board of higher education, for the purpose of defraying the expenses of purchasing property and constructing an integrated carbon plant, beginning with the effective date of this Act and ending June 30, 2019, as follows:

Capital assets	\$22,500,000
Total special funds	\$22,500,000

SECTION 3. VALLEY CITY STATE UNIVERSITY INTEGRATED CARBON PLANT PROJECT - BUDGET SECTION REPORT - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. During the 2017-18 interim, the state board of higher education shall provide a report to the budget section of the legislative management regarding the status of the integrated carbon plant project at Valley City state university. The state board of higher education shall also provide a report to the appropriations committees of the sixty-sixth legislative assembly regarding the status of the project.

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

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 53

SENATE BILL NO. 2203

(Senators Dever, Myrdal, Grabinger)
(Representatives K. Koppelman, Meier, J. Nelson)

AN ACT to provide an appropriation to the attorney general for human trafficking victims treatment and support services; to provide for reports to the attorney general, legislative assembly, and legislative management; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - REPORTS TO ATTORNEY GENERAL, LEGISLATIVE ASSEMBLY, AND LEGISLATIVE MANAGEMENT. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$125,000, or so much of the sum as may be necessary, to the attorney general for the purpose of providing grants to organizations involved in providing prevention and treatment services related to human trafficking victims for the biennium beginning July 1, 2017, and ending June 30, 2019. The attorney general may provide grants for the development and implementation of direct care emergency or long-term crisis services, residential care, training for law enforcement, support of advocacy services, and programs promoting positive outcomes for victims. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-sixth legislative assembly on the use of the funds received and the outcomes of its program. The attorney general shall report to the legislative management during the 2017-18 interim on the status and results of the grant program.

SECTION 2. OIL AND GAS IMPACT GRANT FUND - REPORTS TO ATTORNEY GENERAL, LEGISLATIVE ASSEMBLY, AND LEGISLATIVE MANAGEMENT. The board of university and school lands, from funds designated in subsection 3 of section 5 of chapter 463 of the 2015 Session Laws and in addition to the funds designated in section 2 of chapter 375 of the 2015 Session Laws, shall award, based on recommendations from the attorney general, up to \$700,000 in grants to organizations involved in providing prevention and treatment services related to human trafficking victims for the period beginning with the effective date of this Act and ending June 30, 2019. The board of university and school lands, based on the recommendations from the attorney general, may provide grants for the development and implementation of direct care emergency or long-term crisis services, residential care, training for law enforcement, support of advocacy services, and programs promoting positive outcomes for victims. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-sixth legislative assembly on the use of the funds received and the outcomes of its program. The attorney general shall report to the legislative management during the 2017-18 interim on the status and results of the grant program. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

SECTION 3. EMERGENCY. Section 2 of this Act is declared to be an emergency measure.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 54

SENATE BILL NO. 2224

(Senators Wardner, Robinson)
(Representatives Bellew, Pollert, Mock)

AN ACT to provide appropriations 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. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$350,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing community service supervision grants, for the biennium beginning July 1, 2017, and ending June 30, 2019. The director of the office of management and budget shall distribute the grant funds to North Dakota community corrections association regions on or before August first during each year of the biennium.

SECTION 2. APPROPRIATION - COMMUNITY SERVICE SUPERVISION FUND. Any moneys in the community service supervision fund are appropriated to the office of management and budget for distribution to community corrections association regions on or before August first of each year during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the sixty-fifth 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 2019-21 biennium.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 55**SENATE BILL NO. 2242**

(Senators Krebsbach, Burckhard, Hogue)
(Representatives Bellew, M. Ruby, Schobinger)

AN ACT to provide an appropriation to Minot state university for capital projects; 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 donations and other income, to Minot state university for the capital projects authorized in this section, for the period beginning with the effective date of this Act and ending June 30, 2019, as follows:

Gordon B. Olson Library art center project	\$1,400,000
Herb Parker Stadium air-supported seasonal dome project	634,000
Facilities building parking lot paving and project completion	<u>250,000</u>
Total special funds	\$2,284,000

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

Approved March 24, 2017

Filed March 24, 2017

GENERAL PROVISIONS

CHAPTER 56

HOUSE BILL NO. 1044

(Legislative Management)
(Political Subdivision Taxation Committee)

AN ACT to amend and reenact section 1-01-49, subsection 4 of section 10-30.5-01, subdivision b of subsection 1 of section 10-33-124, subsection 4 of section 26.1-50-01, subsection 3 of section 40-57.1-02, subsection 11 of section 52-02.1-01, subdivision b of subsection 2 of section 57-38-01.33, subdivision c of subsection 4 of section 57-38-30.5, section 57-38.5-01, and subdivision g of subsection 6 of section 57-39.2-04.3 of the North Dakota Century Code, relating to a uniform definition of a primary sector business; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-01-49 of the North Dakota Century Code is amended and reenacted as follows:

1-01-49. Other general definitions.

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

1. "Depose" includes every mode of written statement under oath or affirmation.
2. "Executor" includes administrator and "administrator" includes executor.
3. "Individual" means a human being.
4. "Oath" includes "affirmation".
5. "Organization" includes a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity.
6. "Partnership" includes a limited liability partnership registered under chapter 45-22.
7. "Penitentiary" includes any affiliated facilities.
8. "Person" means an individual, organization, government, political subdivision, or government agency or instrumentality.
9. "Personal property" includes money, goods, chattels, things in action, and evidences of debt.

10. "Preceding" and "following" when used by way of reference to a chapter or other part of a statute means the next preceding or next following chapter or other part.
11. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association certified by the department of commerce division of economic development and finance which through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth.
- For purposes of this subsection, "new wealth" means revenues generated by a business in this state through the sale of products or services to:
- a. Customers outside of this state; or
 - b. Customers in this state if the products or services were previously unavailable or difficult to obtain from a business in this state.
12. "Process" means a writ or summons issued in the course of judicial proceedings.
- 42-13. "Property" includes property, real and personal.
- 43-14. "Real property" shall be coextensive with lands, tenements, and hereditaments.
- 44-15. "Rule" includes regulation.
- 45-16. "Signature" or "subscription" includes "mark" when the person cannot write, the person's name being written near it and written by a person who writes that person's own name as a witness.
- 46-17. "State" when applied to the different parts of the United States, includes the District of Columbia and the territories.
- 47-18. "Testify" includes every mode of oral statement under oath or affirmation.
- 48-19. "United States" includes the District of Columbia and the territories.
- 49-20. "Will" includes codicils.
- 20-21. "Writ" means an order or precept in writing, issued in the name of the state or of a court or judicial officer.

SECTION 2. AMENDMENT. Subsection 4 of section 10-30.5-01 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~"Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth. The term has the meaning provided in section 1-01-49 and includes tourism but does not include production agriculture.~~

¹⁷ **SECTION 3. AMENDMENT.** Subdivision b of subsection 1 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

- b. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that, through a process employing knowledge and labor, ~~addshas the meaning provided in section 1-01-49 value to a product produced for resale.~~

SECTION 4. AMENDMENT. Subsection 4 of section 26.1-50-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Primary sector business" ~~means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth~~has the meaning provided in section 1-01-49. Qualification as a primary sector business under this subsection must be determined by the department of commerce division of economic development and finance.

SECTION 5. AMENDMENT. Subsection 3 of section 40-57.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Primary sector business" ~~means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth~~has the meaning provided in section 1-01-49.

SECTION 6. AMENDMENT. Subsection 11 of section 52-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Primary sector business" ~~means an employer engaged in locating to or in this state which previously had no presence in this state, or in expanding its operations within this state, which through the employment of knowledge or labor, adds value to a product, process, or export service that results in the creation of new wealth, excluding production agriculture, if it~~has the meaning provided in section 1-01-49. For purposes of this subsection, a primary sector business must also be an employer, excluding an employer engaged in production agriculture, which meets the following eligibility criteria:
 - a. An employer entering into an agreement, and increasing its base employment level by at least one employee, or in the case of an employer without an established base employment level in this state creating at least five employees, within the time set in the agreement, is entitled to the new jobs credit from withholding.
 - b. An employer must have an economically productive and socially desirable purpose within the state.
 - c. An employer must not be closing or reducing its operation in one area of the state and relocating substantially the same operation in another area.

SECTION 7. AMENDMENT. Subdivision b of subsection 2 of section 57-38-01.33 of the North Dakota Century Code is amended and reenacted as follows:

¹⁷ Section 10-33-124 was also amended by section 1 of House Bill No. 1048, chapter 85.

- 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~~has the meaning provided in section 1-01-49.

SECTION 8. AMENDMENT. Subdivision c of subsection 4 of section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

- c. ~~"Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service~~has the meaning provided in section 1-01-49.

SECTION 9. AMENDMENT. Section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-01. Definitions.

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

1. "Director" means the director of the department of commerce division of economic development and finance.
2. ~~"New wealth" means revenues to a North Dakota business which are generated by sales of products or services to customers outside of the state. "New wealth" also includes revenues to a qualified business the customers of which previously were unable to acquire, or had limited availability of, the product or service from a North Dakota provider.~~
3. "Passthrough entity" has the same meaning as in section 57-38-01.
4. ~~3. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth~~has the meaning provided in section 1-01-49 but does not include an agricultural commodity processing facility as defined under section 57-38.6-01.
5. ~~4. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:~~
 - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;
 - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
 - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
 - d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
 - e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability.

~~6-5.~~ "Taxpayer" means an individual, estate, or trust or a corporation, passthrough entity, or an angel fund. The term does not include a real estate investment trust.

SECTION 10. AMENDMENT. Subdivision g of subsection 6 of section 57-39.2-04.3 of the North Dakota Century Code is amended and reenacted as follows:

g. ~~"Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth and which has beenhas the meaning provided in section 1-01-49. certified by the department of commerce division of economic development and finance to be qualified under this subdivision.~~

SECTION 11. EFFECTIVE DATE. Section 10 of this Act is effective for taxable events occurring after June 30, 2017, and the remainder of this Act is effective for taxable years beginning after December 31, 2016.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 57

HOUSE BILL NO. 1043

(Legislative Management)
(Judiciary Committee)

AN ACT to amend and reenact section 1-02-12, subsection 10 of section 11-31-03, subsection 1 of section 14-20-12, subsection 1 of section 15.1-21-02.1, section 24-02-30, subsection 1 of section 25-02-01.1, sections 50-06-06.2 and 52-10-04, subsection 4 of section 52-10-05, section 52-10-07, subsection 3 of section 54-44.7-03, subsection 17 of section 54-52-01, subsection 3 of section 54-52-05, sections 57-15-06 and 57-15-08, subsection 1 of section 57-34-03, subsection 7 of section 57-38-30.3, section 57-51.1-03.1, and subsection 19 of section 58-03-07 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; to repeal sections 54-40.3-03, 57-15-10.2, 57-38-01.29, and 57-38-01.30 of the North Dakota Century Code, relating to obsolete provisions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-02-12 of the North Dakota Century Code is amended and reenacted as follows:

1-02-12. HeadnoteCaption, cross-reference note, and source note.

No headnotecaption, source note, or cross-reference note, whether designating an entire title, chapter, section, subsection, or subdivision, constitutes any part of a statute. A headnotecaption may not be used to determine legislative intent or the legislative history for any statute. An effective date or expiration date note precedingimmediately following a headnotecaption is not a part of the headnotecaption and is a part of the statute.

SECTION 2. AMENDMENT. Subsection 10 of section 11-31-03 of the North Dakota Century Code is amended and reenacted as follows:

10. Cooperate with the public roadsfederal highway administration or successors, the state department of transportation, and the townships of the county.

SECTION 3. AMENDMENT. Subsection 1 of section 14-20-12 of the North Dakota Century Code is amended and reenacted as follows:

1. An acknowledgment of paternity must:
 - a. Be in a record;
 - b. Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish his paternity;
 - c. State that the child whose paternity is being acknowledged:

- (1) Does not have a presumed father, or has a presumed father whose full name is stated; and
- (2) Does not have another acknowledged or adjudicated father;
- d. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
- e. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after ~~one year~~two years.

SECTION 4. AMENDMENT. Subsection 1 of section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The twenty-two units of high school coursework set forth in section ~~15.1-21-25~~15.1-21-02.2; and

SECTION 5. AMENDMENT. Section 24-02-30 of the North Dakota Century Code is amended and reenacted as follows:

24-02-30. Conditions precedent to demand for arbitration against director.

No right exists to demand arbitration against the director until the conditions specified in this section have been complied with. The contractor shall give the director notice in writing that the contractor claims the contract has been or will be performed fully on a day stated, which may not be less than ten days after the giving of such notice. At the time stated in the notice the director shall cause the work to be inspected, and if the director claims the work has not been completed, the director, with all reasonable dispatch, having regard to the early completion of the work, shall specify the particulars in which it is incomplete and shall direct that it be completed accordingly, or if the director considers further work necessary to bring the project up to the desired standard for acceptance either by the director or the ~~United States~~federal highway administration, even though the director considers such contract complete, the director likewise may specify any such additional work. The contractor shall proceed with all reasonable dispatch, having due regard to weather conditions, with the performance of all such additional work with a view to a speedy completion of the project. When the contractor claims in good faith, supported by affidavit furnished to the director, that the contractor has completed such additional work according to the specifications furnished to the contractor, and the director fails for ten days to accept such work as completed, the contractor has the right to institute proceedings under this chapter.

¹⁸ **SECTION 6. AMENDMENT.** Subsection 1 of section 25-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The department of human services shall seek appropriations and resources sufficient to ensure maintenance of the state hospital's accreditation by the joint commission ~~on accreditation of health care organizations~~ and certification by the health care financing administration or by similar accrediting and

¹⁸ Section 25-02-01.1 was also amended by section 1 of House Bill No. 1116, chapter 209.

certifying organizations and agencies possessing hospital standards recognized by the health care industry and accepted by the department.

¹⁹ **SECTION 7. AMENDMENT.** Section 50-06-06.2 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.2. Clinic services - Provider qualification - Utilization of federal funds.

Within the limits of legislative appropriation therefor and in accordance with rules established by the department, the department may defray the costs of preventive diagnostic, therapeutic, rehabilitative, or palliative items or services furnished medical assistance eligible individuals by regional human service centers. Within the limits of legislative appropriations and to the extent permitted by state and federal law and regulations established thereunder, it is the intent of the legislative assembly that federal funds available under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] be utilized to defray the costs of identifiable mental health clinic services furnished eligible individuals in regional human service centers and that federal funds available under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] be utilized to defray the costs of identifiable social services furnished to eligible individuals by county social service boards and regional human service centers.

SECTION 8. AMENDMENT. Section 52-10-04 of the North Dakota Century Code is amended and reenacted as follows:

52-10-04. Contributions by employees of the state and of political subdivisions.

1. Every employee of the state or of a political subdivision and every employer is required to pay for the period of such coverage, into the contribution fund established by section 52-10-06, contributions, with respect to wages, as defined in section 52-10-02, equal to the amount of the tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act. Such employee's liability shall arise in consideration of the employee's retention in the service of the state or of a political subdivision or the employee's entry upon such service, after the enactment of this chapter.
2. The employee's contribution imposed by this section must be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction does not relieve the employee from liability for such contribution.
3. If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, must be made, without interest, in such manner and at such times as the state agency shall prescribe.
4. ~~All unexpended employer contributions in the social security contribution fund paid in to provide a fund out of which the legislative assembly could appropriate for the administration of this chapter and chapter 52-09 as of June 30, 1987, must be transferred by the office of management and budget to the~~

¹⁹ Section 50-06-06.2 was also amended by section 6 of Senate Bill No. 2039, chapter 353.

~~bureau for deposit by the bureau into the old age survivors' fund established by section 52-09-05.~~

SECTION 9. AMENDMENT. Subsection 4 of section 52-10-05 of the North Dakota Century Code is amended and reenacted as follows:

4. Delinquent payments due under subdivision a of subsection 3 must bear interest at the rate specified in the Social Security Act at 42 U.S.C. 418 and may be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department or agency of the state. In no case may the interest imposed hereby be less than five dollars. In addition, a penalty may be assessed on delinquent reports if such penalty is provided for in the Social Security Act at 42 U.S.C. 418. Any such penalty must be under the terms, conditions, and in the amounts specified in the Social Security Act. In no case may any penalty imposed hereby be less than five dollars. ~~Annually, on each September thirtieth, the bureau shall determine the balance in the fund created by section 52-10-06 resulting from interest and penalties collected which are not or will not be due to the secretary of the treasury. The bureau shall transfer this balance on September thirtieth to the old age survivors' fund created by section 52-09-05.~~

SECTION 10. AMENDMENT. Section 52-10-07 of the North Dakota Century Code is amended and reenacted as follows:

52-10-07. Referenda and certification.

1. ~~With respect to employees of the state and political subdivisions who are under chapter 52-09 or who may by election come under that chapter, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision who are under a locally administered retirement system, the governor shall authorize a referendum upon request of the governing body of such subdivision; and with respect to employees covered by any other retirement system, the governor may authorize a referendum; and in either case the referendum must be conducted and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act [42 U.S.C. 418], on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act [42 U.S.C. 418] to be given to employees must contain or must be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.~~
2. Upon receiving evidence satisfactory to the governor that with respect to any such referendum the conditions specified in section 218(d)(3) of the Social Security Act [42 U.S.C. 418] have been met, the governor, or an official designated by the governor to act in the governor's behalf in respect to this subsection, shall so certify to the secretary of health and human services.

²⁰ **SECTION 11. AMENDMENT.** Subsection 3 of section 54-44.7-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The date for submission of information from interested persons or firms in response to an invitation must be not less than twenty-one days after publication of the invitation. Interested architect, engineer, and land surveying persons or firms must be required to respond to the invitation with the submission of the information required in general services administration forms ~~SF 254 and SF 255~~ form SF330, architect-engineer related services questionnaire for specific project, or such similar information as the agency selection committee may prescribe by rule.

²¹ **SECTION 12. AMENDMENT.** Subsection 17 of section 54-52-01 of the North Dakota Century Code, which becomes effective after July 31, 2017, is amended and reenacted as follows:

17. "Retirement board" or "board" means the ~~seven persons designated by this chapter as the governing authority for the retirement system created under section 54-52-03.~~

SECTION 13. AMENDMENT. Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 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.

²⁰ Section 54-44.7-03 was also amended by section 1 of House Bill No. 1189, chapter 380.

²¹ Section 54-52-01 was also amended by section 1 of House Bill No. 1148, chapter 379, and section 2 of Senate Bill No. 2053, chapter 372.

SECTION 14. AMENDMENT. Section 57-15-06 of the North Dakota Century Code is amended and reenacted as follows:

57-15-06. County general fund levy.

The board of county commissioners may levy property taxes for county general fund purposes at a tax rate not exceeding sixty mills per dollar of taxable valuation of property in the county.

A county that levied more than sixty mills for taxable year 2015 for the combined number of mills levied for general fund purposes plus the number of mills levied for ~~other purposes consolidated into the general fund levy by this Act~~ which were combined into the general fund for taxable years after 2014 may levy for general fund purposes for taxable year 2016 the same number of mills that was levied for those purposes for taxable year 2015. A county may levy for general fund purposes for taxable year 2017 sixty mills plus seventy-five percent of the combined number of mills exceeding sixty that was levied for those purposes for taxable year 2015. A county may levy for general fund purposes for taxable year 2018 sixty mills plus fifty percent of the combined number of mills exceeding sixty that was levied for those purposes for taxable year 2015. A county may levy for general fund purposes for taxable year 2019 sixty mills plus twenty-five percent of the combined number of mills exceeding sixty that was levied for those purposes for taxable year 2015.

Unless a specific exception is provided by statute, the county general fund levy limitation under this section applies to all property taxes the board of county commissioners is authorized to levy for general county purposes.

SECTION 15. AMENDMENT. Section 57-15-08 of the North Dakota Century Code is amended and reenacted as follows:

57-15-08. General fund levy limitations in cities.

The aggregate amount levied for city general fund purposes may not exceed an amount produced by a levy of one hundred five mills on the taxable valuation of property in the city. A city, when authorized by a majority vote of the electors of the city voting on the question at a regularly scheduled or special election called for such purpose pursuant to a resolution approved by the governing body of the city, may increase the maximum mill levy for general city purposes by not more than ten mills.

A city that levied more than one hundred five mills for taxable year 2015 in the combined number of mills levied for general fund purposes plus the number of mills levied for ~~other purposes consolidated into the general fund levy by this Act~~ which were combined into the general fund for taxable years after 2014 may levy for general fund purposes for taxable year 2016 the same number of mills that was levied for those purposes for taxable year 2015. A city may levy for general fund purposes for taxable year 2017 one hundred five mills plus seventy-five percent of the combined number of mills exceeding one hundred five that was levied for those purposes for taxable year 2015. A city may levy for general fund purposes for taxable year 2018 one hundred five mills plus fifty percent of the combined number of mills exceeding one hundred five that was levied for those purposes for taxable year 2015. A city may levy for general fund purposes for taxable year 2019 one hundred five mills plus twenty-five percent of the combined number of mills exceeding one hundred five that was levied for those purposes for taxable year 2015.

SECTION 16. AMENDMENT. Subsection 1 of section 57-34-03 of the North Dakota Century Code is amended and reenacted as follows:

1. On or before July fifteenth of each year, the tax commissioner shall review the report under ~~subsection 3~~ of section 57-34-02 and compute the total tax to be assessed against each telecommunications carrier in this state at a rate of two and one-half percent of adjusted gross receipts. If the tax commissioner's computation of the total tax differs from the amount computed by a telecommunications carrier, the tax commissioner shall give notice of the change by mail to that telecommunications carrier on or before July fifteenth. The state board of equalization shall assess the tax under this section after consideration of any contest presented.

²² **SECTION 17. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:
 - 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.m. Geothermal energy device installation credit under section 57-38-01.8.~~
 - ~~p.n. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.~~

²² Section 57-38-30.3 was also amended by section 1 of House Bill No. 1239, chapter 400, section 2 of House Bill No. 1045, chapter 399, section 2 of House Bill No. 1050, chapter 389, and section 3 of Senate Bill No. 2032, chapter 373.

- q-o. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- r-p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s-q. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

SECTION 18. AMENDMENT. Section 57-51.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03.1. Stripper well, new well, ~~work-over~~, and secondary or tertiary project certification for tax exemption or rate reduction - Filing requirement.

1. To receive the benefits of a tax exemption or tax rate reduction, a certification of qualifying well status prepared by the industrial commission must be submitted to the tax commissioner as follows:
 1. a. To receive, from the first day of eligibility, a tax exemption on production from a stripper well property or individual stripper well under subsection 2 of section 57-51.1-03, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the stripper well property's or stripper well's qualification period.
 2. ~~To receive, from the first day of eligibility, a tax exemption under subsection 3 of section 57-51.1-03 and a rate reduction on production from a new well under section 57-51.1-02, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after a new well is completed.~~
 3. ~~To receive, from the first day of eligibility, a tax exemption under subsection 4 of section 57-51.1-03 and a rate reduction for a work-over well under section 57-51.1-02, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the work-over project is completed.~~
 4. b. To receive, from the first day of eligibility, a tax exemption under subsection 3 of section 57-51.1-03 and a tax rate reduction under section 57-51.1-02 on production from a secondary or tertiary project, the industrial commission's certification must be submitted to the tax commissioner within the following time periods:
 - a. ~~For a tax exemption, within~~ eighteen months after the month in which the first incremental oil was produced.
 - b. ~~For a tax rate reduction, within~~ eighteen months after the end of the period qualifying the project for the rate reduction.
 5. c. To receive, from the first day of eligibility, a tax exemption or the reduction on production for which any other tax exemption or rate reduction may apply, the industrial commission's certification must be submitted to the tax commissioner within eighteen months of the completion, recompletion, or other qualifying date.

- ~~6. To receive, from the first day of eligibility, a tax exemption under subsection 6 of section 57-51.1-03 on production from a two-year inactive well, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the two-year inactive well's qualification period.~~
2. If the industrial commission's certification is not submitted to the tax commissioner within the eighteen-month period provided in this section, then the exemption or rate reduction does not apply for the production periods in which the certification is not on file with the tax commissioner. When the industrial commission's certification is submitted to the tax commissioner after the eighteen-month period, the tax exemption or rate reduction applies to prospective production periods only and the exemption or rate reduction is effective the first day of the month in which the certification is received by the tax commissioner.

SECTION 19. AMENDMENT. Subsection 19 of section 58-03-07 of the North Dakota Century Code is amended and reenacted as follows:

19. To support an airport or to support or create an airport authority and to levy a tax for airport purposes within the limitations of section ~~57-15-37.12-06-15.~~

²³ **SECTION 20. REPEAL.** Sections 54-40.3-03, 57-15-10.2, 57-38-01.29, and 57-38-01.30 of the North Dakota Century Code are repealed.

SECTION 21. EFFECTIVE DATE. Section 18 of this Act is effective for taxable events occurring after December 31, 2015.

Approved April 13, 2017

Filed April 13, 2017

²³ Section 57-38-01.29 was also repealed by section 4 of Senate Bill No. 2032, chapter 373; section 57-38-01.30 was also repealed by section 4 of Senate Bill No. 2032, chapter 373.

AERONAUTICS

CHAPTER 58

HOUSE BILL NO. 1217

(Representatives Schreiber-Beck, D. Anderson, Kempenich, Zubke)
(Senators Bekkedahl, Klein)

AN ACT to amend and reenact sections 2-05-11 and 2-05-11.3 of the North Dakota Century Code, relating to aircraft registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-11 of the North Dakota Century Code is amended and reenacted as follows:

2-05-11. Aircraft registration - Fees.

The following ~~procedures governing fees and registration~~ apply:

1. Except as provided in section 2-05-11.3, every aircraft or ultralight vehicle operating within this state for more than thirty days must be registered with the aeronautics commission for each calendar year in which the aircraft or ultralight vehicle is operated within this state, subject to rules adopted by the commission. The commission shall charge a fee for each ~~such~~annual registration. The following fees apply:

Gross Weight in Pounds	Registration Fees
0 to 500	\$ 15.00
501 to 1,000	30.00
1,001 to 1,500	38.00
1,501 to 2,000	45.00
2,001 to 2,500	60.00
2,501 to 3,000	75.00
3,001 to 3,500	90.00
3,501 to 4,000	105.00
4,001 to 5,000	120.00
5,001 to 6,000	150.00
6,001 to 7,000	180.00
7,001 to 8,000	210.00

8,001 to 9,000	240.00
9,001 to 10,000	270.00
10,001 to 15,000	300.00
15,001 to 20,000	450.00
20,001 to 30,000	600.00
30,001 to 40,000	900.00
40,001 to 50,000	1,200.00
50,001 to 75,000	1,500.00
75,001 to 100,000	2,250.00
100,001 and over	3,000.00

~~The fees must be reduced ten percent each year after the initial registration, or if the aircraft is one year old or older and being registered for the first time, the fees must be reduced ten percent for each year after the year of manufacture of the aircraft, until the fee reaches a figure equal to fifty percent of the original registration fee, which is the fee each year thereafter. For aircraft that become based in the state after June thirtieth of a calendar year, the registration fee is one-half the annual fee.~~

2. All weights must be based upon the maximum permissible take-off weight, except that the weights must be empty weights for all ultralight vehicles which are not certificated for maximum permissible take-off weight.
3. The aeronautics commission may charge a reasonable cost of service fee for registration of aircraft operated by state agencies, political subdivisions, aviation schools operated by state institutions of higher education, or the civil air patrol in lieu of the regular registration fee.
4. All fees received under this section must be deposited in the aeronautics commission special fund.

SECTION 2. 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~~one hundred twenty-five dollars. The commission shall prepare a distinctive decal denoting permanent registration under section 2-05-11.2. The fee must be deposited in the aeronautics commission special fund.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 59

SENATE BILL NO. 2049

(Government and Veterans Affairs Committee)
(At the request of the Aeronautics Commission)

AN ACT to amend and reenact sections 2-05-22, 57-40.5-09, and 57-40.5-11, subsection 1 of section 57-43.3-02, and sections 57-43.3-03 and 57-43.3-07 of the North Dakota Century Code, relating to the aeronautics commission special fund, aircraft excise tax, and aviation fuel tax; to repeal sections 57-43.3-04 and 57-43.3-06 of the North Dakota Century Code, relating to the aviation fuel tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-22 of the North Dakota Century Code is amended and reenacted as follows:

2-05-22. Interest-- Aeronautics commission special fund.

1. A special fund known as the aeronautics commission special fund is established.
2. The aeronautics commission special fund must be administered and expended by the commission for the following:
 - a. Administration of the commission.
 - b. Airport construction and improvement projects, including:
 - (1) Airport administration and terminal buildings, hangers, and landing strips for aircraft;
 - (2) Purchase of land for airports or landing fields and easements for such facilities;
 - (3) Maintenance and maintenance equipment; and
 - (4) Clearing of sites, marking, lighting and engineering, and navigational aids.
 - c. Administration, construction, reconstruction, repair, maintenance, and operation of airports near communities, recreational areas, or parks, including the international peace garden airport, and for necessary expenses and purchases of land and easements for such facilities.
 - d. Expenses related to the duties of the commission as set out in section 2-05-05, including the creation and distribution of education grants.
3. All money derived from the investment of the aeronautics commission special fund or any portion of the fund, including aircraft excise tax funds collected

and received under chapter 57-40.5, must be credited to the aeronautics commission special fund.

SECTION 2. AMENDMENT. Section 57-40.5-09 of the North Dakota Century Code is amended and reenacted as follows:

57-40.5-09. Allocation of revenue.

All moneys collected and received under this chapter must be transmitted monthly by the director to the aeronautics commission special fund. ~~These funds may be used for airport construction or improvement projects as approved by the aeronautics commission in an amount as allowed by the commission.~~

SECTION 3. AMENDMENT. Section 57-40.5-11 of the North Dakota Century Code is amended and reenacted as follows:

57-40.5-11. Director to act as agent of tax commissioner in administration of aircraft excise tax - Provisions of motor vehicle excise tax applicable.

The state tax commissioner is charged with the administration of this chapter. The provisions of chapter 57-40.3, pertaining to the administration of the motor vehicle excise tax, including provisions for the audit and assessment, not in conflict with the provisions of this chapter, govern the administration of the tax levied in this chapter. The tax commissioner may prescribe all rules, not inconsistent with the provisions of this chapter, for the administration of this chapter. The collection of the aircraft excise tax must be carried out by the director who shall act as the agent of the state tax commissioner and who is subject to all rules, not inconsistent with the provisions of this chapter, that may be prescribed by the tax commissioner. ~~The provisions of this chapter may not be construed to prevent the collection of aircraft excise taxes by the tax commissioner in the course of any audit carried on by the tax commissioner.~~

SECTION 4. AMENDMENT. Subsection 1 of section 57-43.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Except as otherwise provided in this chapter, a~~ tax of eight cents per gallon [3.79 liters] is imposed on all aviation fuel sold or used in this state.

SECTION 5. AMENDMENT. Section 57-43.3-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-03. Refund of tax.

1. A consumer who paid the tax imposed by section 57-43.3-02 may file a claim for a refund with the commissioner pursuant to the refund provisions in chapter 57-43.1. ~~The tax imposed by section 57-43.3-04 must be deducted from the refund.~~
2. Any person to whom aviation fuel is sold on which the tax imposed by this chapter has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state that requires payment of a tax upon the use of the fuel in that state must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. A claim for refund under this section must

be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

3. When a person purchasing aviation fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.
4. The tax commissioner shall deposit in a fund known as the aviation fuel tax refund reserve, such amounts from aviation fuel tax collections as the commissioner deems necessary to pay refunds to persons entitled to refunds under this section.

SECTION 6. AMENDMENT. Section 57-43.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-07. Allocation of unclaimed refund revenue - Appropriation.

~~The tax collected by the commissioner pursuant to~~under section 57-43.3-02, upon which no refund is claimed, and those revenues remaining as unclaimed refunds must be ~~deposited in the office of~~transferred to the state treasurer, who shall deposit ~~such~~the 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 and must be administered and expended by the commission for administration, construction, reconstruction, repair, maintenance, and operation of airports near communities, recreational areas, or parks including the international peace garden airport and for necessary expenses and for the purchase of land and easements for such facilities.~~

SECTION 7. REPEAL. Sections 57-43.3-04 and 57-43.3-06 of the North Dakota Century Code are repealed.

SECTION 8. EFFECTIVE DATE. Sections 4 and 7 of this Act are effective for taxable purchases made after June 30, 2017.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 60

HOUSE BILL NO. 1305

(Representatives Schreiber-Beck, Kading, Olson, Porter)
(Senators Bekkedahl, Cook, Dotzenrod)

AN ACT to amend and reenact sections 2-06-01, 2-06-01.1, 2-06-01.2, 2-06-02, 2-06-03, 2-06-04, 2-06-06, 2-06-07, 2-06-08, 2-06-09, 2-06-10, 2-06-11, 2-06-12, 2-06-13, 2-06-14, 2-06-15, 2-06-16, 2-06-17, 2-06-18, 2-06-19, 2-06-20, 2-06-21, and 2-06-22 of the North Dakota Century Code, relating to the form and style of statutes governing airport authorities; and to repeal sections 2-06-05 and 2-06-23 of the North Dakota Century Code, relating to airport authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-06-01 of the North Dakota Century Code is amended and reenacted as follows:

2-06-01. Definitions.

The following words or terms whenever used or referred to in this chapter have the following respective meanings unless different meanings clearly appear from the context:

1. "Air navigation facility" means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices, used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.
2. "Airport" means any area of land or water which is real or personal property used, or intended for use, to be used for the navigation, landing, and taking off of aircraft, and any appurtenant areas which are real or personal property used, or intended for use, to be used for airport operations or maintenance, buildings or other airport, facilities or rights of way, including or approaches and clear zones, together with all airport buildings and facilities located thereon.
- 3-2. "Airport authority" or "authority" means any regional airport authority or municipal airport authority created pursuant to the provisions of under this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority, pursuant to section 2-06-02.
- 4-3. "Airport hazard" means any structure, object of natural growth, or use of land property which obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

- ~~5-4.~~ "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to under this chapter.
- ~~6-5.~~ "Clerk" means the custodian of the official records of a municipality.
- ~~7-6.~~ "Governing body" means the official or officials authorized by law to exercise ordinance or other lawmaking powers of a municipality.
- ~~8-7.~~ "Municipal airport authority" or "municipal authority" means a municipal airport authority created pursuant to the provisions of under section 2-06-02.
- ~~9-8.~~ "Municipality" means any county, city, or township of this state.
- ~~10.~~ "Person" means any individual, firm, partnership, corporation, limited liability company, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.
- ~~11.~~ "Project" means any airport operated by the authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight or as part of aviation operation, air navigation, and air safety operation.
- ~~12-9.~~ "Real property" means lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.
- ~~13-10.~~ "Regional airport authority" or "regional authority" means a regional airport authority created pursuant to the provisions of under section 2-06-03.

SECTION 2. AMENDMENT. Section 2-06-01.1 of the North Dakota Century Code is amended and reenacted as follows:

2-06-01.1. Aeronautics commission may exercise powers of airport authority - Exceptions.

The North Dakota aeronautics commission shall ~~have~~ has the powers of an airport authority as defined provided in this chapter, except powers to certify or levy taxes or issue bonds, for the purpose of constructing and operating a public airport near the International Peace Garden and ~~for constructing and operating such other public airports or landing fields near international border ports of entry, and near state or national parks, or near recreational areas as the aeronautics commission may determine to be in the public interest.~~

SECTION 3. AMENDMENT. Section 2-06-01.2 of the North Dakota Century Code is amended and reenacted as follows:

2-06-01.2. Airport operation and income.

The aeronautics commission shall ~~have~~ has operational control of airports constructed under the provisions of section 2-06-01.1 and may provide for the

imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes ~~not inconsistent~~ consistent with the use of the premises for airport purposes. All income from the operation of such airports must be deposited in the state treasury in a special operating fund to be known as the airport operating fund. All expenditures from such fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the director of the aeronautics commission. ~~Upon approval of such vouchers by the office of the budget, warrant checks for such expenditures must be prepared by the office of management and budget.~~

SECTION 4. AMENDMENT. Section 2-06-02 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 5. AMENDMENT. Section 2-06-03 of the North Dakota Century Code is amended and reenacted as follows:

2-06-03. ~~Creation of regional~~ Regional airport authority creation or expansion - Dissolution.

1. ~~Two or more municipalities, whether in this state or in an adjoining state, provided that at least one~~ A municipality is in North Dakota, by joint resolution with one or more municipalities in North Dakota or an adjoining state, may create a public body, corporate and politic, to be known as a regional airport authority which is authorized to which may exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. ~~The~~ Under

~~the joint resolution, the governing bodies of the municipalities participating in the creation of a regional airport authority, pursuant to such joint resolution, shall appoint at least five persons as commissioners of the regional airport authority. The number to be appointed and their representation must be provided for in the joint resolution. The term of office of each regional airport authority commissioner must be in accordance with subsection 5. The commissioners who are first appointed must be designated to serve terms of one, two, three, four, or five years with at least one commissioner's term expiring each year. Each such regional airport authority, once created, shall organize, elect officers for terms of office to be fixed by agreement, and adopt and amend from time to time procedural rules for its own procedure not inconsistent~~consistent with section 2-06-06.

2. A regional airport authority may be increased from time to time ~~expanded~~ expanded to serve one or more additional municipalities if ~~the governing body of each additional municipality and, the governing body of each of the municipalities then included in the regional authority, and the commissioners of the regional authority, respectively, each~~ the governing body of each of the municipalities then included in the regional authority, and the commissioners of the regional authority, respectively, each adopt a resolution consenting thereto; ~~provided, that if~~ to the expansion.

~~If a municipal airport authority exists for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the that municipal authority must consent to the inclusion of the municipality in the regional authority, and if, If the municipal authority has any bonds outstanding, one hundred per centum percent of the holders of the bonds bondholders must provide written consent, in writing, to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority must be in the name of and vest in the regional authority.~~

3. ~~A~~ The area encompassed in a regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities; provided, that if, If the regional authority has any bonds outstanding, no decrease may be effected unless one hundred per centum percent of the holders of the bonds bondholders provide written consent thereto in writing to the decrease.
4. A municipality may not adopt any resolution authorized by this section without a public hearing ~~thereon on the resolution. Notice thereof Ten days prior notice of the hearing must be given at least ten days prior thereto published in a newspaper published in the municipality; or, if there is no newspaper published therein in the municipality, then in a newspaper having general circulation in the municipality.~~
5. ~~All commissioners~~ The term of a commissioner of a regional airport authority must be appointed for terms of ~~is~~ five years each, except that a vacancy occurring otherwise than by expiration of an unexpired term must be filled for the unexpired remainder of the term in the same manner as the original appointments.
6. After payment of all debts, a regional airport authority may be dissolved by a joint resolution of the governing bodies of the participating municipalities. Before dissolution, the property of the regional airport authority must be sold,

transferred, or distributed as agreed by the participating municipalities. Any remaining funds of the regional airport authority must be distributed to the general funds of the participating municipalities in proportion to their support of the regional airport authority.

SECTION 6. AMENDMENT. Section 2-06-04 of the North Dakota Century Code is amended and reenacted as follows:

2-06-04. Certificate of incorporation of regional airport authority.

1. Upon the appointment and qualification of the commissioners first appointed to a regional airport authority, ~~they~~the commissioners shall submit to the secretary of state a certified copy of each resolution adopted pursuant to ~~subsection 1 of~~section 2-06-03 hereof by the municipalities included in the regional authority, and ~~upon receipt thereof~~ the secretary of state shall issue a certificate of incorporation to the regional airport authority upon receipt of the resolutions.
2. When a regional airport authority is increased or decreased pursuant to ~~under~~ section 2-06-03, it shall forward to the secretary of state a certified copy of each resolution adopted ~~pursuant thereto~~under that section, and ~~upon receipt thereof~~, the secretary of state shall issue an amended certificate of incorporation ~~in accordance therewith~~upon receipt of the resolutions.

SECTION 7. AMENDMENT. Section 2-06-06 of the North Dakota Century Code is amended and reenacted as follows:

2-06-06. Commissioners - Compensation - Meetings - Officers.

Each commissioner of an airport authority shall hold office until the commissioner's successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners must be filed with the authority. The appointing authority shall establish the rate of compensation for commissioners, duties, and compensation. ~~For such legal services as it may require, an~~ authority may ~~call upon~~obtain legal services from the chief law officer of the municipality or municipalities included in the authority or may employ its own legal counsel and legal staff. An authority may delegate powers or duties to ~~one or more of~~ its agents or employees ~~such powers or duties as it may deem~~deems proper.

The powers of each authority are vested in ~~the~~its commissioners thereof. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business ~~of the authority and exercising its powers and for all other purposes.~~ Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

~~There must be elected~~Each authority shall elect a chairman and vice chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and ~~such~~ other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. ~~For such legal services as it may require, an~~ authority may ~~call upon~~obtain legal services from the chief law officer of the municipality or municipalities included in the authority or may employ its own legal counsel and legal staff. An authority may delegate powers or duties to ~~one or more of~~ its agents or employees ~~such powers or duties as it may deem~~deems proper.

SECTION 8. AMENDMENT. Section 2-06-07 of the North Dakota Century Code is amended and reenacted as follows:

2-06-07. General powers of an authority.

An authority has all the powers necessary or convenient to carry out the purposes of this chapter including the power to certify, annually to the governing bodies creating it, the amount of the proposed tax to be levied by ~~said~~the governing bodies for airport purposes within the limitations in section 2-06-15, ~~including~~and the power:

1. To sue and be sued, to have a seal, and to have perpetual succession.
2. To execute ~~such~~ contracts and other instruments ~~and take such other action~~ ~~as may be~~ necessary or convenient to carry out the purposes of this chapter.
3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports ~~and air navigation facilities~~, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes, an authority may by purchase, gift, devise, lease, eminent domain proceedings, or otherwise acquire property, real or personal, ~~or any interest therein~~, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards, ~~or to prevent the establishment of airport hazards.~~
4. To establish comprehensive airport zoning regulations in accordance with the laws of this state. For the purpose of this chapter, a regional airport authority has the same powers as all other political subdivisions ~~in the adoption to adopt and enforcement of enforce~~ comprehensive airport zoning regulations ~~as provided for by under~~ the laws of this state.
5. To acquire, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, existing airports ~~and air navigation facilities~~; ~~provided, however,~~ an authority may not acquire or take over any airport ~~or air navigation facility~~ owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of ~~such~~the authority, municipality, or public agency.
6. To establish or acquire and maintain airports in, over, and upon any public waters of this state, and any submerged lands under such public waters; and to construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any ~~such~~ airport, and landing floats and breakwaters for the protection ~~thereof~~of an airport.
7. To establish toll access roadways leading to air carrier terminal buildings. The toll access charge may not exceed one dollar per vehicle.

SECTION 9. AMENDMENT. Section 2-06-08 of the North Dakota Century Code is amended and reenacted as follows:

2-06-08. Eminent domain.

In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by chapter 32-15 of ~~the laws of this state, and such other laws that may now or hereafter apply to the~~

state or to political subdivisions of this state in exercising the right of eminent domain. The fact that the property to be acquired by eminent domain proceedings was and other applicable laws. An airport authority may use eminent domain to acquire property acquired by its current owner by eminent domain proceedings does not prevent its acquisition by such proceedings by the authority. For the purpose of making surveys and examinations relative to eminent domain proceedings, it is lawful for the authority to enter upon the land, doing to make surveys and examinations related to eminent domain proceedings as long as doing so results in no unnecessary damage. Notwithstanding the provisions of any other statute or other law of this state, an authority may take possession of any property to be acquired by eminent domain proceedings at any time after the commencement of such the proceedings. The authority is not precluded from abandoning such may abandon the proceedings at any time prior to before final order and decree of the court having jurisdiction of such the proceedings, provided that the authority shall be liable to the owner of the property for any damage done to the property during possession thereof by the authority.

SECTION 10. AMENDMENT. Section 2-06-09 of the North Dakota Century Code is amended and reenacted as follows:

2-06-09. Disposal of airport property.

Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 2-06-13, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility, or other property, or portion thereof or interest therein, acquired pursuant to under this chapter. Such The disposal by sale, lease, or otherwise must be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such the manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

SECTION 11. AMENDMENT. Section 2-06-10 of the North Dakota Century Code is amended and reenacted as follows:

2-06-10. Bonds and other obligations.

1. An authority may borrow money and issue bonds for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such the form and upon such the terms as it may determine chooses, payable out of any revenues of the authority, including grants or contributions from the federal government or other sources, which, The bonds may be sold at not less than ninety-eight percent of par plus the interest accrued on the bonds to the date of the delivery thereof.
2. Bond issues sold at private sale must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities.
3. Any bonds issued pursuant to under this chapter by an authority, or by a governing body exercising the powers thereof of an authority, are payable, as to principal and interest, solely from revenues of an airport or air navigation facility or facilities, and must so state on their face, but if any such issue of

bonds constitutes an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, each bond of the issue is, subject to the requirements of subsection 9, an equally valid and binding special obligation of the authority or municipality, ~~as the case may be,~~ in accordance with its terms, in an amount proportionate to the total amount of the issue which is within the limitation or restriction. Neither the commissioners of an authority nor the governing body of a municipality nor any person executing ~~such~~the bonds is liable personally ~~thereon~~ by reason of the issuance thereof, except to the extent ~~that~~ the bonds, if constituting an indebtedness, exceed any applicable limitation or restriction.

4. ~~In case~~ if any of the commissioners or officers of an authority or municipality whose signatures appear on any bonds or coupons ~~cease~~ceases to be ~~such~~commissioners a commissioner or ~~officers~~officer after authorization but before the delivery of the bonds, the signature shall, nevertheless, ~~be~~ the signature of the commissioner or official remains valid and sufficient for all purposes, the same as if the ~~commissioners~~commissioner or ~~officers~~officer had remained in office until delivery. Any ~~provision of any law to the contrary notwithstanding,~~ any bonds issued ~~pursuant to~~under this chapter are fully negotiable.
5. Any bond reciting in substance that it has been issued by the authority or municipality ~~pursuant to~~under this chapter and for a purpose ~~or purposes~~ authorized by this chapter ~~is conclusively~~must be deemed, in any suit, action, or proceeding involving the validity or enforceability of the bond or the security ~~therefor~~ for the bond, to have been issued ~~pursuant to~~under this chapter and for ~~such~~that purpose ~~or purposes~~.
6. Bonds issued by an authority or municipality ~~pursuant to~~under this chapter are declared to be issued for an essential public and governmental purpose and, together with interest ~~thereon~~ on the bonds, and income ~~therefrom~~ from the bonds, are exempt from all taxes.
7. For the security of any such bonds, the authority or municipality may by resolution ~~make and enter into~~ any covenant, agreement, or indenture authorized to be made as security for revenue bonds issued under chapter 40-35. The sums required ~~from time to time~~ to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any ~~and all~~ revenues referred to in this chapter, ~~prior to~~before the payment of current costs of operation and maintenance of the facilities.
8. The governing body of ~~the~~ a municipality that issues revenue bonds under this chapter shall levy a general tax upon all ~~of the~~ taxable property in the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds issued ~~under this chapter~~ the bonds before August 1, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all ~~of the~~ taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes.
9. Revenue bonds issued by an airport authority after July 31, 2015, must include the commitment of the municipality for the payment of any deficiency

in airport authority funds to pay principal or interest due for revenue bonds as provided in this subsection. The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter after July 31, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter after July 31, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes. The commitment of the municipality and the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, upon placement of the question on the ballot at a primary, general, or special election, by approval of a majority of the qualified electors of the municipalities voting on the question.

SECTION 12. AMENDMENT. Section 2-06-11 of the North Dakota Century Code is amended and reenacted as follows:

2-06-11. Operation and use privileges.

1. a In connection with the operation of an airport ~~or air navigation facility~~ owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed thirty years with any persons:
 - a- (1) Granting the privilege of using or improving the airport ~~or air navigation facility~~ or any portion or facility thereof ~~or space therein~~ of the airport for commercial purposes;
 - b- (2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport ~~or air navigation facility~~; and
 - e- (3) Making available services to be furnished by the authority or its agents at the airport ~~or air navigation facility~~.
 - b. In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which ~~shall~~ must be reasonable and uniform for the same class or privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority; ~~provided, that in no case may.~~ However, the public may not be deprived of its rightful, equal, and uniform use of the airport, ~~air navigation facility~~, or portion of facility thereof the airport.
2. Except as may be limited by ~~the terms and conditions of~~ any grant, loan, or agreement authorized by section 2-06-13, an authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed thirty years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; ~~provided, that no.~~ However, the person may not be granted any authority to operate an airport other than as a public airport ~~or to, and may not~~ enter into any contracts, leases, or other arrangements in connection with the operation

of the airport which the authority might not have undertaken under subsection 1.

SECTION 13. AMENDMENT. Section 2-06-12 of the North Dakota Century Code is amended and reenacted as follows:

2-06-12. Regulations.

An authority is ~~authorized to~~ may adopt, amend, and repeal ~~such any~~ reasonable resolutions, rules, ~~regulations,~~ and orders ~~as it deems necessary~~ for the management, government, and use of any airport or air navigation facility ~~owned by it or under its control~~ it owns or controls. ~~No~~ An airport authority may not issue any rule, regulation, order, or standard ~~prescribed by the commission may be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto~~ under federal law. ~~The~~ Each airport authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and ~~regulations~~.

SECTION 14. AMENDMENT. Section 2-06-13 of the North Dakota Century Code is amended and reenacted as follows:

2-06-13. Federal and state aid.

1. An authority is ~~authorized to~~ may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, ~~in whole or in part,~~ any of the purposes of this chapter. All federal moneys accepted under this section must be accepted and expended by the authority upon ~~such~~ the terms and conditions ~~as are~~ prescribed by the United States and ~~as are~~ consistent with state law; and all state moneys accepted under this section must be accepted and expended by the authority upon ~~such~~ the terms and conditions ~~as are~~ prescribed by the state.
2. An authority is ~~authorized to~~ may designate the state aeronautics commission as its agent to accept:
 - a. Accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish ~~in whole or in part,~~ any of the purposes of this chapter; and ~~to designate the state aeronautics commission as its agent in contracting~~
 - b. Contract for and ~~supervising~~ supervise the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport ~~or other air navigation facility~~.
3. An authority may enter ~~into~~ an agreement with the ~~said~~ aeronautics commission prescribing the terms and conditions of the agency in accordance with ~~such~~ the terms and conditions ~~as are~~ prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the state aeronautics commission must be accepted and transferred or expended by ~~said~~ the commission upon ~~such~~ the terms and conditions ~~as are~~ prescribed by the United States. All moneys received by the state aeronautics commission ~~pursuant to this~~ under subsection shall ~~must~~ 2 must be deposited in the state treasury, and unless otherwise prescribed by the agency from which ~~such~~ the moneys were received, must be kept in separate funds designated according

to the purposes for which the moneys were made available, and held by the state in trust for ~~such~~those purposes.

SECTION 15. AMENDMENT. Section 2-06-14 of the North Dakota Century Code is amended and reenacted as follows:

2-06-14. Tax levy may be requested by airport authority or municipality - Financial report.

An airport authority may request annually from the governing bodies ~~of the municipalities within the authority~~, an amount of tax to be levied by each municipality ~~participating in the creation of the airport authority~~, and the ~~municipality~~municipalities may levy the amount requested, pursuant to ~~provisions of~~under the law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. With its levy request under this section, an airport authority may certify its current and anticipated revenues and resources, any anticipated revenue shortfall for bonded debt payment, and the amount necessary from its property tax levy authority for its annual principal and interest payment for bonded debt incurred under this chapter ~~and, if it~~. If the authority finds that the certified amount is necessary for the annual bonded debt payment, the municipality shall levy for the airport authority not less than the certified amount. In the year for which the levy is sought, an airport authority that is not a city or county governing body and which is seeking approval of a property tax levy of a city or county governing body under this chapter ~~must~~shall file with the auditor of each participating city or county, at a time and in a format prescribed by the auditors, a financial report for the preceding calendar year showing the ending balances of each fund held by the airport authority during that year. The levy made may not exceed the maximum levy permitted by the laws of this state for airport purposes.

The municipality shall collect the taxes levied for an airport authority in the same manner as other taxes are levied and collected. The proceeds of ~~such~~the taxes must be deposited in a special account ~~or accounts~~ in which other revenues of the authority are deposited, and may be expended by the authority as ~~provided for~~in~~allowed under~~ this chapter.

~~Prior to~~Before the issuance of bonds under section 2-06-10, the airport authority or the municipality may by resolution provide its commitment as ~~provided in~~under section 2-06-10 that the total amount of ~~such~~ taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied, and deposited annually until the bonds and interest are fully paid.

SECTION 16. AMENDMENT. Section 2-06-15 of the North Dakota Century Code is amended and reenacted as follows:

2-06-15. Tax levy by county, city, or township for airport or airport authority purposes.

A county, city, or township supporting an airport or airport authority may levy ~~not exceeding up to~~ four mills for airport or airport authority purposes. If any city or township within the county is levying a tax for support of an airport or airport authority and the total of the county and city or county and township levies exceeds four mills, the county tax levy within the city or township levying under this section must be reduced so the total levy in the city or township does not exceed four mills.

SECTION 17. AMENDMENT. Section 2-06-16 of the North Dakota Century Code is amended and reenacted as follows:

2-06-16. Joint operations.

1. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and authority, ~~each as defined in this chapter,~~ any agency of the state government and of the United States, and any municipality, political subdivision, and agency of an adjoining state; and the term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is ~~either than~~not an authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and ~~enjoyed~~ by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of ~~such the~~ other state or of the United States permit such joint exercise of ~~enjoyment~~. Any agency of the state government, when acting jointly with any authority, may exercise and ~~enjoy~~ all the powers, privileges, and authority conferred by this chapter upon an authority.
2. Any two or more public agencies may enter ~~into~~ agreements with each other for joint action pursuant to the ~~provisions of~~ under this section. Each agreement must specify its duration, the proportionate interest ~~which that~~ each public agency must have in the property, facilities, and privileges involved in the joint undertaking, the proportion of costs of ~~operation, etc.,~~ to be borne by each public agency, and ~~such~~ other terms as are ~~deemed~~ necessary or required by law. The agreement may ~~also~~ provide for amendments and termination; disposal of ~~all or any of~~ the property, facilities, and privileges jointly owned, ~~prior to before,~~ or at such times as ~~said the~~ property, facilities, and privileges, ~~or any part thereof,~~ cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and ~~undisposed of;~~ the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and ~~such~~ other provisions as ~~may be~~ necessary or convenient.
3. Public agencies acting jointly pursuant to ~~under~~ this section shall create a joint board ~~which shall consist~~consisting of members appointed by the governing body of each participating public agency. The number to be appointed, ~~their~~ and the term and compensation, ~~if any,~~ of the members must be provided for in the joint agreement. Each joint board shall organize, select officers for ~~such~~ terms ~~as that~~ are fixed by the agreement, and adopt and amend ~~from time to time~~ rules for its own procedure. The joint board ~~has power,~~ as agent of the participating public agencies, ~~to may~~ plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or ~~air navigation facility~~ or airport hazard to be jointly acquired, controlled, and operated, and ~~the board may be authorized by~~ the participating public agencies may authorize the joint board to exercise ~~on behalf of its constituent public agencies~~ all the powers of ~~each the constituent public agencies~~ with respect to the airport, ~~air navigation facility,~~ or airport hazard, subject to the limitations of subsection 4.
4. a. The total expenditures to be made by the joint board for any purpose in any calendar year must be as determined by a budget approved by the constituent public agencies on or before the preceding December first, or as otherwise specifically authorized by the constituent public agencies.

- b. No airport, ~~air navigation facility, or~~ airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget, may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.
- c. Subject to chapter 32-15, ~~the joint board may institute~~ eminent domain proceedings under this section ~~may be instituted by the joint board only by authority of~~ the governing bodies of the constituent public agencies of the joint board ~~authorize the board to do so.~~ If so authorized, ~~such~~ the proceedings must be instituted in the names of the constituent public agencies jointly, and the property so acquired ~~shall~~ must be held by ~~said~~ the public agencies as tenants in common.
- d. The joint board may not dispose of any airport, ~~air navigation facility, or~~ real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, ~~provided that~~ except the joint board may, without ~~such~~ that consent, enter ~~into~~ contracts, leases, or other arrangements contemplated by section 2-06-11 ~~of this chapter.~~
- e. Any resolutions, rules, ~~regulations,~~ or orders of the joint board dealing with subjects authorized by section 2-06-11 become effective only upon approval of the governing bodies of the constituent public agencies, ~~provided that upon such.~~ Upon the approval, the resolutions, rules, ~~regulations,~~ or orders of the joint board have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, ~~regulations,~~ or orders of each public agency would have in its ~~own~~ territory or jurisdiction.
5. ~~For~~ The joint board shall create a joint fund for the purpose of providing the joint board with moneys for the necessary expenditures ~~in carrying to carry out~~ the provisions of this section, ~~a joint fund shall be created and maintained, and~~ into which must be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and operation of any airport ~~or air navigation facility~~ under the jurisdiction of the joint board must be paid into the joint fund. Disbursements from ~~such~~ the fund must be made by order of the board, subject to the limitations prescribed in subsection 4.

SECTION 18. AMENDMENT. Section 2-06-17 of the North Dakota Century Code is amended and reenacted as follows:

2-06-17. Public purpose.

The acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports ~~and air navigation facilities,~~ including the acquisition or elimination of airport hazards, and the exercise of any other powers herein granted to authorities and other public agencies, to be severally or jointly exercised, are ~~hereby declared to be~~ public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter ~~shall and are hereby declared to be~~ acquired and used for public and governmental purposes and as a matter of public necessity.

SECTION 19. AMENDMENT. Section 2-06-18 of the North Dakota Century Code is amended and reenacted as follows:

2-06-18. Airport property and income exempt from taxation.

Any property in this state acquired by an authority for airport purposes pursuant to the provisions of ~~under~~ this chapter, and any income derived by the authority from the ownership, operation, or control thereof ~~of the property~~, is exempt from taxation to the same extent as other property used for public purpose.

SECTION 20. AMENDMENT. Section 2-06-19 of the North Dakota Century Code is amended and reenacted as follows:

2-06-19. Municipal cooperation.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of ~~under~~ this chapter, any municipality for which an authority has been created may, ~~upon such terms, with or without consideration, as it may determine:~~

1. Lend or donate money to the authority.
2. Provide that all revenues received by the municipality for airport purposes, be transferred, paid, or credited to an airport authority fund. The city auditor or county treasurer may establish and maintain the fund to account for airport authority revenues and shall make payments from the fund for invoices that ~~have been submitted and approved by the governing body of the airport authority.~~ On request of the city auditor or county treasurer and during an audit, the governing board of the airport authority shall supply its records. ~~The records must be provided on a timely basis.~~ The fund may not revert to the governing body of the municipality at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of airport facilities.
3. Cause water, sewer, or drainage facilities, or any other facilities ~~which that~~ it is empowered to provide, to be furnished adjacent to or in connection with ~~such airports or air navigation facilities.~~
4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges ~~therein in the property~~ to the authority.
5. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to ~~such airports or air navigation facilities.~~
6. Do any and all things, ~~whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities.~~
7. Enter into agreements with the authority respecting action to be taken by the municipality ~~pursuant to the provisions of under~~ this section.

SECTION 21. AMENDMENT. Section 2-06-20 of the North Dakota Century Code is amended and reenacted as follows:

2-06-20. Out-of-state airport jurisdiction authorized - Reciprocity with adjoining states and governmental agencies.

1. For the purpose of this section, "governmental agency" means any municipality, city, ~~town~~, county, public corporation, or other public agency.
2. This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports ~~or air navigation facilities~~ within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.
3. Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports ~~and air navigation facilities~~ within this state, subject to the laws of this state applicable to airports ~~and air navigation facilities~~. Subject to chapter 32-15, the adjoining state or governmental agency has the power of eminent domain in this state, which must be exercised in the manner provided by the laws of this state governing condemnation proceedings, ~~provided that~~except the power of eminent domain may not be exercised unless the adjoining state authorizes the exercise of that power ~~therein that state~~ by this state or any governmental agency ~~thereof this state~~ having any of the powers mentioned in this section.
4. The powers granted in this section may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination ~~as may be agreed upon by them.~~

SECTION 22. AMENDMENT. Section 2-06-21 of the North Dakota Century Code is amended and reenacted as follows:

2-06-21. Supplemental authority.

In addition to the general and special powers conferred by this chapter, every authority is ~~authorized to~~may exercise such powers ~~as are necessary incidental to the exercise of such~~the authority's general and special powers.

SECTION 23. AMENDMENT. Section 2-06-22 of the North Dakota Century Code is amended and reenacted as follows:

2-06-22. Savings clause -- Airport zoningZoning.

~~Nothing contained in this chapter shall be construed to limit any right, power, or authority. This chapter does not supersede the authority of a municipality to regulate airport hazards by zoning.~~

SECTION 24. REPEAL. Sections 2-06-05 and 2-06-23 of the North Dakota Century Code are repealed.

Approved March 24, 2017

Filed March 24, 2017

AGRICULTURE

CHAPTER 61

SENATE BILL NO. 2026

(Legislative Management)
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-01, 4.1-15, 4.1-19, 4.1-54, 4.1-55, 11-38, 11-39, and 15-12.1, a new section to chapter 19-02.1, and chapter 54-60.3 of the North Dakota Century Code, relating to revisions of agriculture laws regarding the agriculture commissioner, the northern crops institute, eggs, miscellaneous agriculture laws, the state fair association, county extension agents, the county fair association, agricultural experiment stations, and the agricultural products utilization commission; to amend and reenact subsection 2 of section 57-15-06.7 of the North Dakota Century Code, relating to counties levying taxes to fund extension agents; to authorize the legislative council to make certain statutory redesignations; to repeal chapters 4-01, 4-02, 4-02.1, 4-05.1, 4-08, 4-11.1, 4-13.2, 4-14, 4-14.1, 4-14.2, 4-19, 4-21.1, 4-21.2, 4-22, 4-23, 4-24, 4-30, 4-32, 4-33, 4-35, 4-35.1, 4-35.2, 4-36, 4-37, 4-40, 4-41, 4-43, and 19-07 of the North Dakota Century Code, relating to the agriculture commissioner, agricultural fair associations, the state fair association, agricultural experiment stations, county agents, potato production contracts, the poultry division, unfair discrimination in the purchase of farm products, the agriculturally derived fuel tax fund, the northern crops institute, forestry and tree distribution, nurseries and nursery stock, the trees for North Dakota program, soil conservation districts, agricultural conservation and adjustment, miscellaneous agriculture laws, dairy products regulations, the interstate pest control compact, plant pests, the pesticide act, chemigation regulation, pesticide and pesticide container disposal, the agricultural development act, agriculture in the classroom, crop production products, industrial hemp, meatpacking plant assistance, and eggs; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

4.1-01-01. Definitions.

As used in this title, unless otherwise provided:

1. "Commissioner" means the agriculture commissioner or the designee or authorized representative of the commissioner.
2. "Department" means the North Dakota department of agriculture.

4.1-01-02. Salary of agriculture commissioner.

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

4.1-01-03. Compelling attendance of witnesses and production of books and papers.

The commissioner may compel the attendance of persons at hearings before the commissioner, and the production of books and papers. The commissioner may examine witnesses under oath and may administer oaths. The commissioner's office must file and preserve any testimony taken by the commissioner.

4.1-01-04. Exhibits at fairs.

The commissioner shall have charge of the exhibits of products or resources of the state which are shown at any fair or exposition in the United States. The commissioner shall cooperate with any railroad company doing business in the state, and with any person interested in securing an exhibit at any fair or exposition in the United States.

4.1-01-05. Cooperation with federal agencies in destruction of predatory animals, destructive birds, and injurious field rodents.

1. The commissioner may cooperate with the United States department of agriculture, animal and plant health inspection service, or other appropriate federal agency, in the control and destruction of:
 - a. Fur-bearers and field rodents that are injurious to:
 - (1) Livestock;
 - (2) Poultry; or
 - (3) Big and small game.
 - b. Big game threatening human health or domestic livestock; and
 - c. Birds causing crop damage or substantial economic loss or threatening human health.
2. The control and destruction of animals must be approved by the director of the game and fish department. The commissioner may enter written agreements with the animal and plant health inspection service or other appropriate federal agency, and the director of the game and fish department to determine:
 - a. The methods and procedures for the control and destruction of the birds and animals;
 - b. The extent of supervision required by the commissioner and the animal and plant health inspection service or other appropriate federal agency; and
 - c. The use and expenditure of the funds appropriated by the legislative assembly for the control and destruction of the animals.

3. The commissioner, in cooperation with the animal and plant health inspection service or other appropriate federal agency, may enter agreements with other governmental agencies and with counties, associations, corporations, limited liability companies, or individuals for control and destruction of birds and animals under this section.

4.1-01-06. Expenditures authorized - Who to approve vouchers - Qualifications of hunters and trappers hired - When bounties not payable.

The commissioner may authorize expenditures from funds available for equipment, supplies, and other expenses, including expenditures for personal services of hunters and trappers, as may be necessary to execute the functions of the commissioner under section 4.1-01-05. Hunters and trappers employed under section 4.1-01-05 must be state residents. Hunters and trappers employed under section 4.1-01-05 are not entitled to bounty provided by state laws for the killing or extermination of birds and animals under that section. All vouchers for expenditures made by the commissioner under this section must be approved by the duly authorized agent of the animal and plant health inspection service or other appropriate federal agency.

4.1-01-07. Disposition of proceeds of furs, skins, and specimens taken.

All furs, skins, and specimens taken by hunters and trappers paid out of funds appropriated to carry out section 4.1-01-05 must be disposed of in a manner the commissioner determines is in the best interest of the state. If furs, skins, or specimens are sold, the net proceeds of the sales, up to fifteen thousand dollars per biennium, must be used by the United States department of agriculture wildlife services to fund program activities benefiting the state's livestock producers.

4.1-01-08. Marketing bureau.

The commissioner shall establish and maintain a marketing bureau to gather and disseminate statistical information on any agricultural marketing problems of the state and to engage in marketing services of agricultural products. Any moneys received or generated by the pride of Dakota program must be deposited in the agriculture department operating fund in the state treasury.

4.1-01-09. Certified beef program.

The commissioner may collaborate with the state board of animal health, the North Dakota stockmen's association, North Dakota state university beef systems, and the United States secretary of agriculture to develop a source-verified and process-verified beef marketing program known as the certified beef program.

4.1-01-10. Sustainably grown in North Dakota - Application - Logo - Promotion of commodities.

1. The commissioner may implement a program to promote agricultural commodities sustainably grown in North Dakota.
2. If a program under subsection 1 is implemented, the program must require a producer to file an application with the commissioner. If a producer demonstrates 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 may develop, and make available for use by authorized producers, a logo indicating the commodity is sustainably grown in North Dakota. The commissioner 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 commissioner may engage in research and educate members of the public regarding agricultural commodities that are sustainably grown in this state.
6. For purposes of this section, "sustainably grown" means a crop grown using research-based practices resulting 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.

4.1-01-11. Advisory committee on sustainable agriculture - Creation - Duties - Powers - Compensation - Report to legislative management - Continuing appropriation.

1. The commissioner shall appoint an advisory committee on sustainable agriculture.
 - a. The committee must include:
 - (1) The chairman of the house agriculture committee or the chairman's designee;
 - (2) The chairman of the senate agriculture committee or the chairman's designee;
 - (3) The commissioner of the department of commerce or the commissioner's designee;
 - (4) The director of the North Dakota state university agricultural experiment station;
 - (5) An agricultural producer who utilizes innovative research-based technologies in farming operations;
 - (6) A representative of an international agricultural corporation; and

- (7) An individual specializing in the domestic and international marketing of agricultural products.
- b. If both houses of the legislative assembly are controlled by the same party, the committee also must include one member of the legislative assembly from the minority party, appointed by the chairman of the legislative management.
2. The committee shall:
- a. Examine sustainability with respect to conventional farming practices and modern technology-based production practices;
- b. Examine production practices that are efficient and able to meet current and future global food and nutritional needs;
- c. Examine production practices that promote increased efficiencies in resource use, improve human health through access to safe and nutritious food, and enhance economic opportunities for individual producers;
- d. Explore metric evaluations to measure the attainment, maintenance, and certification of sustainability;
- e. Advise the commissioner regarding the development of a sustainability certification program and the marketing and packaging of products containing the certification;
- f. Explore the standards held by international private sector certifying groups which have the potential to increase sales of North Dakota products; and
- g. Report to the legislative management on the status of committee activities.
3. The committee may accept gifts, grants, and donations of money, property, and services. All moneys received as gifts, grants, or donations are appropriated on a continuing basis to the commissioner for the purpose of carrying out this section.
4. Each legislative member of the committee is entitled to receive per diem compensation in the amount established by subsection 1 of section 54-03-20 plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the committee.

4.1-01-12. Commodity groups - Agriculture commissioner - Meetings.

1. The commissioner may participate, as a nonvoting member, in any regular or special meeting of a commodity group, including any executive session held by a commodity group.
2. Annually, the commissioner shall call a meeting of representatives from each commodity group to engage in collaborative efforts to promote and market agricultural commodities.
3. For purposes of this section, "commodity group" means the:
- a. North Dakota barley council;

- b. North Dakota beef commission;
- c. North Dakota beekeepers association;
- d. North Dakota corn utilization council;
- e. North Dakota dairy promotion commission;
- f. North Dakota dry bean council;
- g. North Dakota dry pea and lentil council;
- h. North Dakota oilseed council;
- i. North Dakota potato council;
- j. North Dakota soybean council;
- k. North Dakota turkey federation; and
- l. North Dakota wheat commission.

4.1-01-13. Publicly owned land - Noxious weed control or eradication.

1. The commissioner shall arrange a noxious weed control or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state.
2. Each weed control officer shall arrange a noxious weed control or eradication program with political subdivisions owning or controlling public land within the weed control officer's jurisdiction.
3. If a federal agency does not control or eradicate noxious weeds on land under its jurisdiction and does not develop a management plan for controlling or eradicating the noxious weeds, the appropriate weed control office shall notify the agency of the failure to control or eradicate the noxious weeds. The federal agency shall provide a report to the weed control authorities detailing the methods used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds. The commissioner may specify the forms on which the federal agency report must be submitted.
4. Upon being notified by a weed board of the federal agency's failure to control or eradicate noxious weeds, the commissioner may hold a public hearing to determine the reason for the failure.

4.1-01-14. Equine slaughter - Establishments.

The commissioner shall monitor federal statutory and regulatory actions related to the slaughter of horses, mules, and other equines, and in particular, actions pertaining to the establishments in which the slaughter and preparation of the carcasses may take place. The commissioner may pursue or support federal legislative, regulatory, or contractual avenues allowing 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.

4.1-01-15. Agricultural wetland credits - Database.

The commissioner shall create and maintain an electronic database of wetland credits available for purchase by an agricultural landowner.

4.1-01-16. Grape and wine advisory committee - Membership.

The commissioner shall appoint a grape and wine advisory committee. The committee must include:

1. Two individuals who are grape producers;
2. One individual who is the producer of a fruit, other than grapes, used in vinification;
3. Two individuals who own wineries located in this state; and
4. One representative of the North Dakota grape and wine association.

4.1-01-17. Pipeline restoration and reclamation oversight pilot program - Generally.

1. The commissioner shall establish a pilot program providing technical assistance and support to surface owners and surface tenants on pipeline restoration and followup support to surface owners and surface tenants on pipeline reclamation.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on pipeline issues. The ombudsmen may not investigate or assist with any pipeline installed before January 1, 2006, or regulated by the public service commission under title 49, and may not assist in easement negotiations.
3. The pilot program may provide technical education, support, and outreach on pipeline-related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the surface owners and surface tenants, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.

4.1-01-18. Federal environmental law impact review committee.

1. The federal environmental law impact review committee consists of:
 - a. The commissioner, who shall serve as the chairman;
 - b. The governor or the governor's designee;
 - c. The majority leader of the house of representatives, or the leader's designee;
 - d. The majority leader of the senate, or the leader's designee;
 - e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;

- f. One individual appointed by the lignite energy council;
 - g. One individual appointed by the North Dakota corn growers association;
 - h. One individual appointed by the North Dakota grain growers association;
 - i. One individual appointed by the North Dakota petroleum council;
 - j. One individual appointed by the North Dakota soybean growers association; and
 - k. One individual appointed by the North Dakota stockmen's association.
2. The committee shall review federal environmental legislation and regulations detrimentally impacting or potentially detrimentally impacting the state's agricultural, energy, or oil production sectors. The committee shall confer with the attorney general with respect to participation in administrative or judicial processes pertaining to the legislation or regulations.
 3. a. Any member of the legislative assembly serving on the committee is entitled to compensation at the rate provided for attendance at interim committee meetings and reimbursement for expenses, as provided by law for state officers, if the member is attending meetings of the committee or performing duties directed by the committee.
 - b. The compensation and reimbursement of expenses, as provided for in this subsection, are payable by the legislative council.

4.1-01-19. Environmental impact - Cost of participation.

1. Any expenses incurred by the commissioner or by the federal environmental law impact review committee in meeting the requirements of section 4.1-01-18 must be paid by the commissioner from the federal environmental law impact fund.
2. If the attorney general elects to participate in an administrative or judicial process pertaining to federal environmental legislation or regulations, which detrimentally impact or potentially detrimentally impact the state's agricultural, energy, or oil production sectors, any expenses incurred by the attorney general in the participation must be paid by the commissioner from the federal environmental law impact review fund.
3. For purposes of this section, "expenses" include administrative costs, consulting fees, research costs, expert witness fees, attorney fees, and travel costs.

4.1-01-20. Gifts - Grants - Donations.

The commissioner may accept gifts, grants, and donations for the purposes set forth in section 4.1-01-19, provided the commissioner posts the amount and source of any gifts, grants, and donations on the department's website. Any moneys received in accordance with this section must be deposited in the federal environmental law impact review fund.

4.1-01-21. Federal environmental law impact review fund - Continuing appropriation.

1. The federal environmental law impact review fund consists of:
 - a. Any moneys appropriated or transferred for the purposes set forth in section 4.1-01-19; and
 - b. Any gifts, grants, and donations forwarded to the commissioner for the purposes set forth in section 4.1-01-19.
2. All moneys in the federal environmental law impact review fund are appropriated to the commissioner on a continuing basis for the purposes set forth in section 4.1-01-19.

4.1-01-22. Agriculture in the classroom program.

1. The agriculture commissioner shall administer an agriculture in the classroom program with the advice of the agriculture in the classroom council.
2. The agriculture in the classroom council consists of seven individuals. The agriculture commissioner shall appoint six council members. The seventh council member is the superintendent of public instruction or the superintendent's designee. Annually, the council shall elect one of its members to serve as the chairman.
3. At the call of the chairman, the council shall meet at least twice each year, to confer with and advise the agriculture commissioner regarding issues related to the agriculture in the classroom program.
4. The agriculture 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.
5. The agriculture commissioner may:
 - a. Consult and work with the superintendent of public instruction, the department of career and technical education, the United States department of agriculture, and any other public or nonpublic entities to provide and promote an agriculture in the classroom program;
 - b. Prepare instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles;
 - c. Provide training programs for public school teachers in agricultural curriculum activities;
 - d. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles; and
 - e. Monitor the quality and condition of the agriculture in the classroom program.

6. The agriculture commissioner may accept and expend 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, the commissioner shall honor the purpose provided the purpose is consistent with this chapter.
7. Members of the agriculture in the classroom council may not receive any compensation for their services on the council, but are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

SECTION 2. Chapter 4.1-15 of the North Dakota Century Code is created and enacted as follows:

4.1-15-01. Northern crops institute - Northern crops council - Powers and duties - Gifts and grants - Continuing appropriation.

1. The northern crops institute is administered by and in conjunction with North Dakota state university.
2. The northern crops council, in consultation with the president of North Dakota state university, shall appoint the director of the northern crops institute and may remove the director for cause. The director shall manage the institute, hire and compensate necessary personnel within the limits of legislative appropriations, prepare a biennial budget, and serve as executive secretary to the northern crops council. The council shall fix the salary of the director, within the limits of legislative appropriations, in consultation with the president of North Dakota state university.
3. The president of North Dakota state university may participate in the hiring of a director for the institute, including serving on search committees, advertising, and interviewing and negotiating with candidates.
4. Funds appropriated to the northern crops institute may not be commingled with funds appropriated to North Dakota state university. Appropriation requests of the northern crops institute must be separate from appropriation requests of North Dakota state university.

4.1-15-02. Northern crops council - Duties - Chairman - Meetings.

The northern crops council shall establish policies for the operation of the northern crops institute.

1. The council consists of:
 - a. The agriculture commissioner or the commissioner's designee;
 - b. The president of North Dakota state university of agriculture and applied science or the president's designee;
 - c. The president and general manager of the North Dakota mill and elevator association;
 - d. An individual selected by the North Dakota barley council;
 - e. An individual selected by the North Dakota oilseed council;

- f. An individual selected by the North Dakota soybean council;
 - g. An individual selected by the North Dakota wheat commission;
 - h. No fewer than five nor more than seven individuals who produce northern crops, selected by the members referenced in subdivisions a through g; and
 - i. No more than four representatives of industries that process northern crops, selected by the members designated in subdivisions a through g.
2. a. The term of office for each member of the council referenced in subdivisions d through i of subsection 1 is three years, and those members are limited to two 3-year terms.
 - b. Each term of office begins with the first meeting after the member's appointment.
3. Annually, the council members shall select one of the individuals referenced in subdivisions d through i of subsection 1 to serve as the chairman.
 4. The council shall meet at least three times annually at the times and places as determined by the council and may meet in special meeting upon the call and notice as may be prescribed by rules adopted by the council.
 5. If a member is unable to attend a meeting of the council, the member may be represented by an individual who has a written proxy from the member.

4.1-15-03. Purpose - Powers and duties.

The northern crops institute shall provide technical and marketing assistance through specialized training courses and technical services that facilitate domestic and market development and expanded sales of northern grown crops. The institute shall render services including:

1. In-plant consultations regarding crop quality problems, product manufacturing, and possible purchasing methods and standards.
2. Short courses in product milling and processing, plant management, county elevator management, grain grading, and marketing of crops.
3. Educational and career and technical education training programs in milling, processing, manufacturing, purchasing methods, marketing procedures, product sales techniques, and other related subjects to be conducted for users of northern crops.
4. Short-term investigations, consultation, evaluation, and research to solve technical problems involved in the maintenance of quality and utilization of northern crops.
5. Annual surveys and quality analyses of new northern crops and monitoring of the quality and condition of commodities in market channels.
6. Research on northern crop damage problems and solutions.
7. Identification of problem areas in marketing northern crops abroad.

8. Preparation of instructional, informational, and reference publications on the end use, technical aspects of marketing, and utilization of northern crops for distribution domestically and abroad.

4.1-15-04. Gifts and grants - Continuing appropriation.

The northern crops institute may contract for and accept private contributions and gifts and grants-in-aid from the federal government, private industry, and other sources. Those funds may be spent only for the purposes of this chapter and for any purposes designated in the gift, grant, or donation and those funds are appropriated on a continuing basis to the northern crops institute for those purposes.

SECTION 3. Chapter 4.1-19 of the North Dakota Century Code is created and enacted as follows:

4.1-19-01. Definitions.

As used in this chapter:

1. "Eggs" means eggs in the shell which are the product of a domesticated chicken.
2. "Poultry" means domesticated fowl bred for the primary purpose of producing eggs, meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.

4.1-19-02. Administration - Enforcement.

The agriculture commissioner shall administer and enforce this chapter.

4.1-19-03. Purposes - Duties.

The agriculture commissioner shall:

1. Promote improved poultry breeding practices and cooperate with the board of animal health in controlling and eradicating contagious or infectious diseases of poultry.
2. Act as the official state agency for North Dakota in cooperation with the veterinary services, animal plant health inspection service, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.
3. Act as the state agency to cooperate with the United States department of agriculture to provide federal-state grading service for poultry and poultry products offered for sale at the retail level, to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold.
4. Promote the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within the state.
5. Adopt rules under chapter 28-32 as necessary to effectuate the purposes of this chapter.

4.1-19-04. Licensing - Fees - Bonding.

A person must be licensed by the agriculture commissioner to engage in the business of poultry buyer, processor, packer, hatchery operator, or salesperson. Licenses issued under this chapter expire on July first and must be issued or renewed only upon payment to the commissioner of the license fee of five dollars for each business activity subject to licensing and the furnishing of the bond required by rules adopted by the agriculture commissioner. Engaging in a business activity subject to licensing under this chapter without a valid license or failure to pay any license fee or to furnish the required bond within ten days after it becomes due or required is a violation of this chapter.

4.1-19-05. Penalty.

1. Any person who violates any provision of this chapter or rule adopted under this chapter is guilty of a class A misdemeanor.
2. Any person who violates any provision of this chapter or rule adopted under this chapter may be subject to a civil penalty not to exceed one thousand dollars for each violation. This penalty may be adjudicated by the courts or by the agriculture commissioner through an administrative hearing conducted by an independent hearing officer pursuant to chapter 28-32.
3. The agriculture commissioner may maintain an appropriate civil action in the name of the state against any person violating this chapter or rule adopted under this chapter.
4. Any person who knowingly makes a false statement, representation, or certification in any application, record, report, or other document is guilty of a class A misdemeanor.
5. For purposes of this section, "person" means an individual, partnership, corporation, limited liability company, association, cooperative, or any business entity.

4.1-19-06. Eggs to be graded - Exemption.

1. All eggs sold or offered for sale to an ultimate consumer in this state must be candled, graded, and labeled with the correct grade designation.
2. The agriculture commissioner may adopt appropriate rules under chapter 28-32 to provide for registration of egg dealers and standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, transportation, labeling, and sanitation in conformity with United States department of agriculture regulations governing the grading and inspecting of eggs.

SECTION 4. Chapter 4.1-54 of the North Dakota Century Code is created and enacted as follows:

4.1-54-01. Sale of chemically treated grain - Misdemeanor.

A person may not sell grain for the purpose of human or animal consumption which has been chemically treated for insect or fungus control, without informing the purchaser of the treatment. Any person selling chemically treated grain without informing the purchaser of the treatment is guilty of a class B misdemeanor.

4.1-54-02. North Dakota winter show - Official site of the North Dakota agricultural hall of fame.

The North Dakota winter show, an annual exhibition, shall be held in Valley City. No other event may be designated as, nor call itself, the North Dakota winter show, or any similar name designed to confuse the public with the exhibition sponsored every year in Valley City by the North Dakota winter show. The North Dakota winter show is a nonprofit corporation organized under the laws of this state. The North Dakota winter show is the official site of the North Dakota agricultural hall of fame.

4.1-54-03. Agricultural commodity assessments funds - Investment income allocation.

1. Notwithstanding any other provision of law, the state treasurer shall invest in accordance with section 21-10-07 all available moneys in:
 - a. The potato fund;
 - b. The oilseed fund;
 - c. The dry bean fund;
 - d. The dry pea and lentil fund;
 - e. The barley fund;
 - f. The soybean fund;
 - g. The corn fund;
 - h. The honey fund;
 - i. The turkey fund;
 - j. The milk marketing fund;
 - k. The dairy promotion commission fund;
 - l. The state wheat commission fund;
 - m. The ethanol fund; and
 - n. The North Dakota beef commission fund.
2. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer shall establish rules, in cooperation with the agricultural commodity organizations, 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.

4.1-54-04. Agricultural commodity promotion groups to report to the legislative assembly - Report contents.

1. From the first to the tenth legislative day of each regular legislative session, the following entities must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly:
 - a. The North Dakota ethanol council;
 - b. The North Dakota potato council;
 - c. The North Dakota oilseed council;
 - d. The North Dakota dry bean council;
 - e. The North Dakota dry pea and lentil council;
 - f. The North Dakota barley council;
 - g. The North Dakota soybean council;
 - h. The North Dakota corn utilization council;
 - i. The North Dakota beekeepers association;
 - j. The North Dakota turkey federation;
 - k. The North Dakota milk marketing board;
 - l. The North Dakota dairy promotion commission;
 - m. The North Dakota state wheat commission; and
 - n. The North Dakota beef commission.
2. The presiding officer of each house of the legislative assembly may direct the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, and a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, also must include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

4.1-54-05. North Dakota agricultural hall of fame - Establishment - Induction.

The North Dakota agricultural hall of fame is established at the North Dakota winter show.

1. To be eligible for induction into the North Dakota agricultural hall of fame, an individual must:
 - a. Have reached the age of forty-five;

- b. Have been involved in the state's agricultural industry for a minimum of twenty years; and
 - c. Be nominated for induction by a member of the North Dakota agricultural hall of fame committee.
2. A nomination must be in writing and must include the nominee's personal history, education, employment, and history of contributions to and achievements in the state's agricultural industry; the nominee's participation in professional organizations; the nominee's career-related activities and civic contributions, honors, and awards; a statement from the candidate, if possible; and the date and signature of the nominator.
 3. The North Dakota agricultural hall of fame committee shall select inductees by majority vote. The selections must be based on the nominee's record of accomplishment in the state's agricultural industry. The committee shall give due consideration to the nominee's participation in organizations represented by members of the North Dakota agricultural hall of fame committee.

4.1-54-06. North Dakota agricultural hall of fame committee - Members.

1. The North Dakota agricultural hall of fame committee consists of the following individuals, each of whom must be selected by the governing body of the entity or the official to be represented:
 - a. A representative of the North Dakota winter show;
 - b. A representative of agricultural media;
 - c. A representative of agriculture in the area of career and technical education;
 - d. A representative of the North Dakota stockmen's association;
 - e. A representative of the North Dakota grain growers association;
 - f. A representative of the North Dakota oilseed council;
 - g. A representative of county extension agents;
 - h. A representative of the agriculture commissioner;
 - i. A representative of the North Dakota pork producers;
 - j. A representative of the North Dakota sheep producers;
 - k. A representative of the national agricultural marketing association;
 - l. A representative of the North Dakota implement dealers association;
- m. A representative of the North Dakota farm bureau;
- n. A representative of the North Dakota farmers union; and
- o. A representative of the national farmers organization.

2. The committee, by a two-thirds majority, may add a new agricultural organization to select a representative on the North Dakota agricultural hall of fame committee. The committee, by a majority vote, may remove the name of an organization that no longer exists from the North Dakota agricultural hall of fame committee.
3. The representative of the North Dakota winter show shall serve as the chairman of the committee and the secretary of the North Dakota winter show shall serve as the secretary of the committee. The chairman shall determine the time and location of all committee meetings.
4. The committee shall determine the number of nominees to be inducted into the North Dakota agricultural hall of fame each year. Any person who is nominated for induction into the North Dakota agricultural hall of fame and fails to receive the requisite votes for induction but receives at least one vote is automatically carried over for consideration for induction the following year. The nominee may provide the committee with updated or additional information to be considered.
5. The committee shall select the inductees by secret ballot and shall announce the selection at the North Dakota agricultural hall of fame banquet, to be held each year during the North Dakota winter show. Inductees must receive a plaque and have their photographs displayed at the North Dakota agricultural hall of fame.

4.1-54-07. Purple coneflowers (Echinacea purpurea or Echinacea angustifolia) - Unauthorized removal - Penalty.

1. It is a class A misdemeanor for any person to willfully enter upon state-owned land or land owned by another and remove or attempt to remove a purple coneflower, Echinacea purpurea or Echinacea angustifolia, from the land without the express written consent of the landowner. A person in violation of this section is subject to court-ordered restitution to the landowner, and is also subject to a civil penalty of up to ten thousand dollars.
2. It is a class A misdemeanor for any person to willfully possess a purple coneflower removed from land in violation of this section. A person in violation of this section is also subject to a civil penalty of up to ten thousand dollars.
3. Any vehicle used to transport a purple coneflower removed or possessed in violation of this section is forfeitable property under chapter 29-31.1.

4.1-54-08. 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 shall:

- (1) Provide written notice to the agriculture commissioner of the person's belief that a patent infringement has occurred and include facts supporting the allegation;
 - (2) Provide written notice to the farmer of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
 - (3) Obtain the written permission of the farmer.
- b. If the farmer withholds written permission, the person holding a patent may petition the district court of the judicial district in which the property is located 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 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 not obtain more samples than are 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. 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 that 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 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 5. Chapter 4.1-55 of the North Dakota Century Code is created and enacted as follows:

4.1-55-01. State fair association - North Dakota state fair.

The North Dakota state fair association shall conduct an annual North Dakota state fair, including exhibition of the agricultural, stockbreeding, horticultural, mining, mechanical, industrial, and other products and resources of this state. The North Dakota state fair must be held at Minot, North Dakota, at a site to be selected by the state fair association. No other fair in the state may include in its name the words "state fair".

4.1-55-02. State fair association members.

1. The state fair association membership must be selected in the following manner:
 - a. Three members must be chosen annually from each county, who are residents of the county. From each county, one member must be selected by the county fair board, one member selected by the board of county commissioners, and one member selected by the county agent. In a county in which there is no county fair board or county agent, or neither, the board of county commissioners shall select the members for which there is no other appointing authority under this subsection. A majority of the members must be selected under this subsection.
 - b. By a two-thirds vote of the board of directors, the directors may elect individuals as nonvoting honorary life members in recognition of eminent services in agriculture, horticulture, or associated arts and sciences; long and faithful service in the association; or benefits conferred upon the association.
2. The election and selection of members must be made and certified to the state fair association on or before each annual meeting. The term of each member, except honorary life members, begins at the opening of the annual meeting after being chosen under subsection 1 and continues until the opening of the succeeding annual meeting. Each member holds office until that member's successor is chosen and qualified. A member who is a director remains a member through that member's term of office as director. Any member may resign from membership by filing a written resignation with the secretary of the association but memberships are not transferable or assignable. By majority vote of all members of the board, the board of directors may suspend or expel a member for cause.

4.1-55-03. Meetings of the association - Time and place - Notice.

1. The annual meeting of the state fair association must be held as provided in the bylaws of the association. The annual meeting must include election of directors and the transaction of other business of the association. If the election of directors is not held on the day designated for the annual meeting or at an adjournment of the annual meeting, the board of directors shall cause the election to be held at a special meeting as soon thereafter as convenient. The failure to hold the annual meeting at the designated time does not result in a forfeiture or dissolution of the association.
2. A special meeting may be held upon the call of the president or by order of the board of directors. The president shall call a special meeting upon request by ten percent or more of the association members.
3. The president or board of directors, whichever calls the meeting, may designate any place within the state as the place of an annual or special meeting.
4. At least ten but not more than fifty days before an association meeting, written or printed notice stating the place, day, and hour of any meeting of the association must be delivered to each member entitled to vote at the meeting, personally or by mail or by any form of digital communication directed with verification of receipt to a digital communication address at which the member has consented to receive notice. Delivery of notice must be done by, or at the direction of, the president or the secretary or the officers or persons calling the meeting. For a special meeting, or when required by law or the bylaws, the purpose for which the meeting is called must be stated in the notice. If mailed, the notice of the meeting is deemed to be delivered when deposited in the United States mail, addressed to the member at the member's address as it appears on the records of the association with prepaid postage.

4.1-55-04. Compensation and expenses of members.

Each member of the board of directors is entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers while attending meetings or performing duties directed by the board. The board of directors may pay to members rendering unusual or special services to the association special compensation appropriate to the value of the services.

4.1-55-05. Board of directors - Terms.

The affairs of the state fair association must be managed by its board of directors, which must consist of nine members unless otherwise provided in the association bylaws. A decrease in the number of directors may not affect the term of any incumbent director. Each director shall hold office for a term of three years, and until that director's successor has been elected and qualified. The terms of the directors must be staggered so three directors are elected annually. The directors must be members of the state fair association and residents of the state.

4.1-55-06. Annual meeting of the board of directors - Special meetings - Notice.

1. A regular annual meeting of the board of directors must be held immediately after and at the same place as the annual meeting of the association. Notice

of the regular annual meeting of the board of directors must be included in the notice of the annual meeting of the state fair association. The board of directors may provide by resolution the time and place for the holding of additional regular meetings of the board without other notice than that resolution.

2. Special meetings of the board of directors may be called by the president or upon the written request of two of the directors. The president shall fix the time and place for the holding of any special meeting of the board of directors.
3. Notice of any special meeting of the board must be given to each director at least three days before the meeting by written notice delivered personally, sent by mail, or by any form of digital communication directed with verification of receipt to a digital communication address at which the director has consented to receive notice. Any director may waive notice of any meeting. The attendance of a director at any meeting constitutes a waiver of notice of that meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted, nor the purpose of any regular or special meeting of the board of directors, need be specified in the notice or waiver of notice of such meeting.

4.1-55-07. Quorum of board of directors to transact business.

A majority of the board of directors constitutes a quorum for the transaction of business at any meeting of the board. If less than a majority of the directors are present at a meeting, a majority of those present may adjourn the meeting from time to time without further notice. The act of a majority of the directors present at a meeting at which a quorum is present is the act of the board of directors unless the act of a greater number is required by law or by the bylaws. A director participating in a meeting through an electronic communication medium may be considered to be present at the meeting for purposes of this chapter.

4.1-55-08. Vacancies and special compensation of board members.

Any vacancy occurring on the board of directors must be filled by the board of directors for the unexpired term of the vacancy. The board of directors may contract for and pay directors rendering unusual or exceptional services to the association special compensation appropriate to the value of those services.

4.1-55-09. Officers - Removal - Vacancies.

The officers of the association must be a president, vice president, secretary, treasurer, and such other officers as may be created by the board of directors. An officer of the association shall perform the duties of the office as prescribed by law, the bylaws, or the board of directors. Any two or more offices may be held by the same individual except the offices of president and secretary. The president, vice president, secretary, and treasurer must be elected annually by the board of directors. Any office created by the board may be filled by appointment at any meeting of the board. Each elected officer holds office until that officer's successor has been duly elected and qualified. Any officer elected or appointed may be removed by the board. The removal of any officer is without prejudice to any contractual rights of the officer. Election or appointment of an officer or agent does not create contractual rights. A vacancy in any office may be filled by the board of directors for the unexpired portion of the term.

4.1-55-10. Officers - Duties.

1. The president is the principal executive officer of the association and shall supervise and control the business and affairs of the association and preside at all meetings of the association and the board of directors. The president may sign, with the secretary or any other officer of the association authorized by the board of directors, any deeds, mortgages, bonds, contracts, or other instruments the board of directors has authorized to be executed, except when the signing is expressly delegated by the board of directors, the bylaws, or law to some other officer or agent of the association. The president shall perform all duties incident to the office of president and duties as may be prescribed by the board of directors.
2. In the absence, inability, or refusal to act of the president, the vice president shall perform the duties of the president and when so acting has all the power of and is subject to all the restrictions upon the president. If there is more than one vice president, the vice president elected or appointed earliest in time shall perform the duties of the president. A vice president shall perform such duties as assigned by the president or board of directors.
3. If required by the board of directors, the treasurer shall give a bond for the faithful discharge of the treasurer's duties in a sum with that surety as determined by the board. The treasurer shall perform or supervise the performance of all the duties incident to the office of the treasurer and shall:
 - a. Keep accurate financial records for the association;
 - b. Deposit all money, drafts, and checks in the name of and to the credit of the association in the depositories designated by the board;
 - c. Endorse for deposit all notes, checks, and drafts received by the association as directed by the board, making proper vouchers;
 - d. Disburse association funds and issue checks and drafts in the name of the association, as directed by the board;
 - e. Give to the president and the board, when requested, an account of all transactions by the treasurer and of the financial condition of the association; and
 - f. Perform other duties assigned by the board or the president.
4. The secretary shall keep the minutes of the meetings of the board of directors; see that all notices are duly given in accordance with the bylaws or as required by law; be custodian of the association records; keep a register of the post-office address of each member as furnished to the secretary by the member; and, in general, perform or supervise the performance of all duties incident to the office of secretary and other duties as assigned by the president or by the board of directors.
5. Any other officers created by the board of directors may be required to give bonds for the faithful discharge of their duties in such sum and with such sureties as determined by the board of directors and shall perform duties assigned to them by the treasurer, secretary, president, or board of directors.

4.1-55-11. Director's liability limited.

The individual members of the board of directors of the state fair association are not liable for the negligence of any person, firm, corporation, or limited liability company staging any show, race, or other amusement at the state fair, nor for the negligence of any person employed by them.

4.1-55-12. Bylaws, rules, and regulations.

The state fair association may make all bylaws, rules, and regulations, not inconsistent with law, which it deems necessary or proper to carry out its responsibilities under this chapter and for the government of the state fair grounds, and for all activities on the state fair grounds, and for the protection, health, safety, and comfort of the public. The bylaws, rules, and regulations are in effect from the time of filing with the secretary of the association.

4.1-55-13. Appointment of necessary employees.

The president, or any other person delegated the authority by the board of directors, shall appoint and employ deputies and other subordinates; contractors, architects, builders, clerks, accountants, and other experts; and agents and servants as required to carry out the functions of the state fair association. Salaries and other compensation must be set by the president and board of directors and any expenses incurred in the performance of employment must be reimbursed in the same manner and for the same amounts as is provided for officials and employees of the state.

4.1-55-14. State fair operating fund - Continuing appropriation.

A special fund for the North Dakota state fair association to be known as the state fair operating fund must be maintained in the state treasury. All income, fees, rents, interest, and any other moneys, from any source derived by the state fair association, must be deposited in that fund for the use of the North Dakota state fair association. Moneys credited to the fund are appropriated as a standing appropriation for the purposes provided in this chapter. The fund is not subject to section 54-44.1-11.

4.1-55-15. Organization under corporation laws - Real property transactions - Contracts.

The state fair association has the rights, privileges, and liabilities of a corporation under the corporation laws of this state except as provided by this chapter. The association may purchase, hold, lease, exchange, trade, or sell real estate for the purpose of promoting and conducting a state fair. Real estate controlled by the state fair association may be leased, subleased, rented, or used for other than fair purposes when the property is not needed for fair purposes. The state fair association may contract in its own name, but as an agency of the state, and shall make all of its purchases under the purchasing laws of the state, except as exempted by the director of the office of management and budget.

4.1-55-16. Name in which business conducted and titles taken - Execution of written instruments.

All business of the association must be conducted under the name of "North Dakota state fair association". Title to property obtained in regard to the operation of the association must be obtained and conveyed in the name of the state of North Dakota, doing business as the North Dakota state fair association. Written instruments must be executed in the name of the state of North Dakota.

4.1-55-17. Certified audit of state fair association.

The state fair association shall submit annually to the governor and the legislative audit and fiscal review committee an audit report prepared by a certified public accountant based upon an audit of all records and accounts of the association.

4.1-55-18. Attorney general to act as legal adviser.

The attorney general shall appoint an assistant attorney general or a special assistant attorney general to provide legal assistance to the state fair association. The appointment is revocable at the pleasure of the attorney general. This section does not prohibit the state fair association from employing any other attorney to carry out the legal functions of the association or provide additional legal services, other than those provided through the office of the attorney general, necessary for the proper administration of the state fair association.

4.1-55-19. Law enforcement - Arrangements with local law enforcement agencies.

The state fair association shall make arrangements with local law enforcement agencies for the provision of law enforcement personnel. For the purpose of enforcing any state and local laws, rules, regulations, bylaws, and ordinances of the state fair association, negotiations may be entered with local law enforcement agencies for the use of law enforcement personnel or the deputizing of employees of the state fair association. The cost of providing law enforcement personnel is the responsibility of the state fair association, except in the case of law enforcement officials who are functioning in their normal capacity as agents of the state or its political subdivisions. Law enforcement personnel shall wear appropriate badges of office while acting as such.

4.1-55-20. Service of process.

In any action or proceeding upon a claim arising out of the conduct of the state fair, service of process may be made as provided in section 53-05-04.

4.1-55-21. Regulation and licensing.

The state fair association shall regulate all shows, exhibitions, performances, establishments, and privileges carried on during the state fair and ensure those enterprises are properly licensed according to local and state laws. The state fair association may license any enterprises not required to be licensed by state or local laws. The state fair association shall ensure that shows, exhibitions, performances, establishments, and exercise of fair privileges are conducted in compliance with all state and local laws and all rules and regulations of the state fair association.

4.1-55-22. Nonliability of state for debts - Exception.

The state is not liable for any of the debts or liabilities of the state fair association except as appropriations are made for that purpose by the legislative assembly.

4.1-55-23. Annual report.

The secretary or other officer charged with compiling an annual report of the proceedings of the state fair association and its financial condition for the preceding fiscal year by the annual meeting shall file a copy in the office of the agriculture commissioner. The commissioner shall include it, in whole or in part, in the commissioner's biennial report to the governor and the secretary of state.

4.1-55-24. 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.

SECTION 6. Chapter 11-38 of the North Dakota Century Code is created and enacted as follows:

11-38-01. County extension agent - Petition to authorize or discontinue levy - Election - Levy limitations.

1. Upon the filing with the county auditor at least sixty-four days before the date of a general election of a petition to authorize or discontinue a tax levy for extension work, containing the names of twenty percent of the qualified electors of the county as determined by the votes cast for governor in the county in the most recent gubernatorial election, the board of county commissioners shall submit to the qualified electors at the next general election the question of authorizing or discontinuing a tax levy for extension work. Upon approval by a majority of qualified electors of the county voting on the question of authorizing a tax levy for extension work, the board of county commissioners may levy a tax of up to two mills as provided in subsection 2 of section 57-15-06.7. Upon approval by a majority of qualified electors of the county voting on the question of discontinuing a tax levy for extension work, the board of county commissioners shall terminate any levy or additional levy previously authorized under this chapter and may terminate county expenditures for extension work.
2. The board of county commissioners may submit to the electors at a primary or general election the question of approval of voter-approved additional levy authority for extension work for a period not exceeding ten years and if approved by a majority of the electors voting on the question, the board of county commissioners may levy an additional tax not exceeding the limitation in subsection 2 of section 57-15-06.7. Voter-approved additional levy authority authorized by electors of a county before January 1, 2015, remains in effect through taxable year 2024 or for the time period authorized by the electors, whichever expires first. After January 1, 2015, approval or reauthorization by electors of voter-approved additional levy authority under this section may not be effective for more than ten taxable years.
3. The board of county commissioners may appropriate funds out of the county general fund to cover any unanticipated deficiency in funding for extension work. All funds raised by levies under this chapter must be appropriated by the board of county commissioners for the purposes set forth in this chapter.

11-38-02. Form of petitions.

The petitions provided for in section 11-38-01 must be in substantially the following form:

PETITION REGARDING LEVY FOR EXTENSION WORK

We, the undersigned, qualified electors of _____ County, North Dakota, petition the board of county commissioners that it [levy or discontinue the levy of] a tax not to exceed two mills to employ an extension agent for the purpose of carrying on extension work in cooperation with the North Dakota state university extension service.

11-38-03. Form of ballot.

The question to be voted upon as provided in section 11-38-01 must be submitted on a separate ballot and must be worded as follows:

1. For a petition to authorize a levy:

For extension work _____

Against extension work _____

2. For a petition to discontinue a levy:

For discontinuing the extension work levy _____

Against discontinuing the extension work levy _____

11-38-04. Extension agent selection.

When a majority of the votes are cast to authorize a tax levy for extension work, by the following July first the North Dakota state university extension service shall conduct interviews and select a candidate for extension agent.

If a vacancy occurs in the extension agent position, the North Dakota state university extension service, with approval of the board of county commissioners, shall conduct interviews and select a candidate for extension agent.

11-38-05. Discontinuance of extension work levy - Transfer of unobligated funds.

If a majority of the votes cast at an election to discontinue authority for a tax levy under section 11-38-01 are in favor of discontinuing authority for the levy for extension work, the tax levy and the services of the extension agent must be discontinued on the thirty-first day of December following the date of election. Upon the discontinuance of extension work, accumulated and unobligated funds remaining in the special fund for that purpose must be transferred to the county general fund and the special fund must be closed out.

11-38-06. Budgeting for extension work.

1. When the board of county commissioners is authorized to make a levy for the employment of an extension agent, the board shall provide an annual budget that stipulates the salary of the agent, field and office expenses, and allowance for staff.
2. The budget must be revised annually to account for changes in agent and staff salaries and operating expenses. The board of county commissioners annually shall provide the North Dakota state university extension service input on the extension agent's performance. The extension agent's annual salary adjustment must be agreed upon by the board of county commissioners and the extension service based on the agent's annual performance and consideration of county and extension service budget limitations.
3. After agreeing upon a budget and after deducting the amount of funds contributed from federal and state funds, the board of county commissioners shall levy within the authorization under this chapter or appropriate funds out of the county general fund, or both, to cover the county's share of the budget.

11-38-07. Extension agent to submit monthly account of expenditures.

The extension agent shall submit monthly an accurate itemized account of all expenditures incurred by the agent in the regular conduct of duties to the North Dakota state university extension service for examination and audit. When charges are made by an extension agent for money expended in the performance of official duties and consistent with the approved budget, expenditures must be covered by a subvoucher or receipt according to county policy for reimbursement. The subvoucher or receipt must show at what place, on what date, and for what the money expended was paid. The extension agent shall forward the subvouchers or receipts with the bill, claim, account, or demand against the county. Charges made for transportation expenses may not exceed the amounts provided by section 11-10-15, and must be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose of travel, verified by affidavit. The account must be transmitted and recommended for payment by the North Dakota state university extension service which shall audit and approve or disallow any expense item.

11-38-08. Achievement days - Premiums - Report of extension agent.

In July of each year the office of management and budget shall pay from funds appropriated for boys' and girls' clubwork a sum not to exceed five hundred dollars to the extension agent of each county within the state conducting boys' and girls' achievement days, to be used exclusively for the payment of premiums at the boys' and girls' achievement days. Within thirty days following the boys' and girls' achievement days, the extension agent shall refund to the office of management and budget any balance not expended, which must be remitted to the state treasurer and placed to the credit of the general fund.

11-38-09. Direction and supervision of extension agent.

The North Dakota state university extension service shall actively direct and supervise the work of the extension agent. The extension agent regularly shall request feedback from the board of county commissioners on county programs, based on local and state needs considerations. The work of the county agent may not conflict with state or federal laws or regulations governing appropriations for extension work.

11-38-10. Report to board of county commissioners.

An extension agent shall file a statement of the agent's work with the board of county commissioners either monthly or within a mutually agreed upon timeframe not to exceed one year.

11-38-11. Dissatisfaction with extension agent - Meeting to be arranged.

If the North Dakota state university extension service or the board of county commissioners becomes dissatisfied with the performance of an extension agent or the level of funding support required, the dissatisfied entity shall arrange a joint meeting at which detailed information as to the dissatisfaction with the performance of the agent or the level of funding support required must be presented and such joint action taken as is justified by the evidence.

11-38-12. Administration - Position adjustments - Budget section report.

The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota state university extension service subject to the supervision of the state board of higher education.

Funds appropriated to the North Dakota state university extension service may not be commingled with funds appropriated to North Dakota state university. An appropriation request to defray expenses of the North Dakota state university extension service must be separate from an appropriation request to defray expenses of North Dakota state university. Subject to the availability of funds, the director of the North Dakota state university extension service may adjust or increase full-time or part-time equivalent positions to carry out the mission of the extension service. All full-time or part-time positions must be separate from North Dakota state university. Annually, the director of the North Dakota state university extension service shall report to the office of management and budget and to the budget section any adjustments or increases made under this section.

SECTION 7. Chapter 11-39 of the North Dakota Century Code is created and enacted as follows:

11-39-01. County fair association organization as nonprofit corporation.

A county fair association must be organized under the nonprofit corporation laws of this state. In addition to the powers and duties of nonprofit corporations under the laws of this state, a county fair association has the powers and duties specified in this chapter.

11-39-02. Fair association - County funding.

1. A fair association may be organized in any county. The officers and directors must be residents of the county or, if the association is to conduct a multicounty fair, residents of one of the participating counties. The association may make written application to the board of county commissioners for a grant to aid in the erection of buildings and other improvements suitable to conduct the fair and to pay premiums and expenses that may be awarded on fair exhibits. An application must include evidence that the association is incorporated in this state as a nonprofit corporation, the names and places of residence of all its officers and directors, and evidence of ownership or right to use of sufficient real property in the county to conduct the fair.
2. The board of county commissioners may not provide county funding or official county fair authorization under this chapter to more than one fair association or to any association organized for profit.
3. If the board of county commissioners is satisfied the statements in the application are true and the association intends in good faith to annually hold a fair within the county for the exhibition of agricultural, livestock, horticultural, mining, mechanical, industrial, and manufactured products of the county, and of those articles as are usually exhibited at fairs, and other public displays of human art, industry, and skill, the board may provide the association official county fair authorization and funding from revenues derived from the county general fund levy authority. If the funding is approved, the county treasurer shall pay to the secretary of the association, by the following July thirty-first, the amount of funding approved and shall take the receipt of the association for the payment.
4. Any amount received by the county fair association must be deposited by the secretary of the association in a special fund.
5. To promote holding a county fair, the board of county commissioners may purchase or lease in the name of the county not to exceed two hundred forty

acres [97.12 hectares] of real estate and construct buildings and improvements for the conduct of a county fair. The board of county commissioners may issue bonds in the name of the county if approved by electors of the county in accordance with sections 21-03-06 and 21-03-07 to purchase not to exceed two hundred forty acres [97.12 hectares], of real estate and construct buildings and improvements for the conduct of a county fair.

6. Upon the board's own motion, the board of county commissioners may continue to provide funding under this section after the first year's grant of aid.
7. The authority of this section may be used by a county to join in formation and funding of a multicounty fair association under terms of an agreement with one or more other counties.

11-39-03. County fair association funding to be submitted to vote.

If the board of county commissioners has voted and ordered county general fund funding for a fair association and a petition is addressed to the board and filed with the county auditor, asking the discontinuance of the funding and containing the signatures of qualified electors of the county in a number equal to twenty percent or more of the total vote cast in the county at the last preceding general election, the board shall submit to the qualified electors of the county at the next succeeding general election the question of whether funding is to be continued. The ballot must be in the following form:

Shall the board of county commissioners continue the annual Yes
funding in aid of a county fair? No

If a majority of all the ballots cast on the question at the election is in favor of discontinuing the funding, the board of county commissioners may not thereafter provide funding in aid of a county fair under this chapter until the question of resuming the annual funding is approved by a vote of the qualified electors of the county. The ballot must be in the following form:

Shall the board of county commissioners resume the annual Yes
funding in aid of a county fair? No

If a majority of the ballots cast on the question at the election is in favor of resuming the funding, the board of county commissioners shall resume the annual funding subject to the other provisions of this chapter.

11-39-04. County fair authorization - Forfeiture.

Any county fair association that fails to hold a county fair for ten consecutive years forfeits its official authorization. After a forfeiture, another fair association may organize within a county and apply, or the forfeiting organization may reapply, to the board of county commissioners for official county fair authorization and aid under this chapter.

11-39-05. Disposition of property.

The board of county commissioners may sell property used for county fair purposes and held in the name of the county upon terms and conditions set by the board. The proceeds of such sale must be placed in the county general fund.

If the county fair association fails to hold a fair within the county for two consecutive years, the board of county commissioners may direct that any county property on hand be sold and the proceeds of the sale and any unexpended balance in the county fair fund be transferred to the county general fund.

11-39-06. County funding to cease when fair not held - Misappropriation of funds.

The board of county commissioners shall refuse to provide funding for a county fair association that failed to hold a fair within the county in any year for which it has received funding from the county. In such a case, the board of county commissioners shall inquire into the disposition of moneys paid by the county to the association after its last annual report, and if there has been any misappropriation it shall institute proceedings at once to recover the sum misappropriated. For any such misappropriation, the officers, trustees, or directors of the association shall be liable personally to the county.

11-39-07. Power to make regulations governing premises.

Fair associations may make rules, regulations, and provisions necessary and proper for the government, management, and control of the premises used by them for the holding of fairs and expositions and for the regulation of the use of the premises.

11-39-08. Director's civil immunity.

The individual members of the board of directors of any fair association are immune from civil liability for any act or omission relating to service as a director for the negligence of any person, firm, corporation, or limited liability company staging any show, race, or other amusement at any county or municipal fair and are immune from civil liability for any negligence of any person employed by the board of directors or the association conducting such fair.

11-39-09. Treasurer to give bond - Duty of officers and directors.

The officers and directors of any fair association shall require the treasurer of the association to give a sufficient bond to those officers and directors, conditioned for the faithful keeping of that money as may come into the treasurer's hands as the treasurer. The treasurer may not receive funds of a fair association until the treasurer is properly bonded.

11-39-10. Nonliability of state for debts - Exception.

The state is not liable for any of the debts or liabilities of a fair association except to the extent appropriations are made for that purpose by the legislative assembly.

SECTION 8. Chapter 15-12.1 of the North Dakota Century Code is created and enacted as follows:

15-12.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agricultural experiment station" means the North Dakota state university main research center, the Dickinson research extension center, the Williston research extension center, the Langdon research extension center, the central grasslands research extension center, the Carrington research extension center, the Hettinger research extension center, the north central research

extension center, the agronomy seed farm, and any other department or agency designated by the state board of higher education.

2. "Center director" means the administrator in charge of a research or research extension center.
3. "Station director" means the administrator of the agricultural experiment station.

15-12.1-02. Agricultural experiment station.

The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota agricultural experiment station subject to the supervision of the state board of higher education. Funds appropriated to the agricultural experiment station may not be commingled with funds appropriated to North Dakota state university. Appropriation requests to defray expenses of the agricultural experiment station must be separate from appropriation requests to defray expenses of North Dakota state university.

15-12.1-03. Center directors - Research and research extension centers - Records and information.

The station director has jurisdiction over the research and research extension centers of the agricultural experiment station. The center director shall administer each research or research extension center. The center director shall report to the station director. Each research or research extension center shall keep detailed records of all research activities. The research or research extension center shall publish and disseminate research results and information for the benefit of this state.

15-12.1-04. Reports.

Each center director shall submit an annual report to the station director. Each report must set forth in detail the investigations and experiments made during the preceding year, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended during the preceding year, and the results of all experiments that have been completed during the preceding year. By September first of each year, the station director shall submit these reports, with a report of the North Dakota state university main research center, to the state board of agricultural research and education and the state board of higher education.

15-12.1-05. North Dakota state university main research center position adjustments - Budget section report.

The North Dakota state university main research center must be located on the campus of North Dakota state university of agriculture and applied science. The center is the administrative location of the agricultural experiment station. The center shall conduct research and coordinate all research activities of the agricultural experiment station. The research must have, as a purpose, the development and dissemination of technology important to the production and utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must provide for the enhancement of quality of life, sustainability of production, and protection of the environment. The station director may adjust or increase full-time equivalent positions to carry out activities to accomplish the mission of the agricultural experiment station, subject to the availability of funds. All full or partial positions must be separate from North Dakota state university. The station director shall report annually to the office of management and budget and to the budget section any adjustments or increases made under this section. The center may conduct baseline research, including

production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops. The center may collect feral hemp seed stock and develop appropriate adapted strains of industrial hemp which contain less than three-tenths of one percent tetrahydrocannabinol in the dried flowering tops. The agriculture commissioner shall monitor the collection of feral hemp seed stock and industrial hemp strain development and shall certify appropriate stocks for licensed commercial cultivation.

15-12.1-06. Dickinson research extension center.

The Dickinson research extension center must be located in or near Dickinson in Stark County. The center shall conduct research:

1. On increasing the carrying capacity of native rangeland, with emphasis on conservation and preservation for future generations;
2. On grass production to determine how to best compensate for the vagaries of the weather as it influences forage production in the agriculture of western North Dakota;
3. At the ranch location in Dunn County with beef cattle and swine on breeding, feeding, management, and disease control for the benefit of livestock producers of western North Dakota and the entire state; and
4. Designed to increase productivity of all agricultural products of the soil by maintaining or improving the soil resource base in the agricultural region of southwestern North Dakota by:
 - a. The identification of adapted crop species and superior crop cultivars;
 - b. Propagation and distribution of selected seed stock; and
 - c. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

15-12.1-07. Williston research extension center.

The Williston research extension center must be located in or near Williston in Williams County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of northwestern North Dakota by:

1. The identification of adapted crop species and superior crop cultivars;
2. Propagation and distribution of selected seed stocks; and
3. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

15-12.1-08. Langdon research extension center.

The Langdon research extension center must be located in or near Langdon in Cavalier County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of northeastern North Dakota by:

1. The identification of adapted crop species and superior crop cultivars;

2. Propagation and distribution of selected seed stocks; and
3. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

15-12.1-09. Central grasslands research extension center.

The central grasslands research extension center must be located within an area bounded by the Missouri River on the west and the James River on the east. The center shall conduct research:

1. Designed to fulfill needs within an area bounded by the Missouri River on the west and the James River on the east; and
2. To increase the range-carrying capacity of native range, with emphasis on:
 - a. The conservation and preservation for future generations;
 - b. The stabilization of grass production to discover how to best compensate for the vagaries of the weather and precipitation as it influences forage production in agriculture;
 - c. The identification of the impact of different management systems upon beef production in the central region of the state; and
 - d. The exploration of increased use of crop residues and byproducts for the maintenance of the cowherd.

15-12.1-10. Carrington research extension center.

The Carrington research extension center must be located in or near Carrington in Foster County. The center shall conduct research designed to:

1. Determine the potential of irrigated agriculture in the region proposed for irrigation development in the state which must be related to both crop and livestock production; and
2. Increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of east central North Dakota by:
 - a. The identification of adapted crop species and superior crop cultivars;
 - b. Propagation and distribution of selected seed stocks; and
 - c. Development of profitable cropping and integrated crop and livestock systems that achieve the necessary balance between profitability and conservation of all natural resources.

15-12.1-11. Hettinger research extension center.

The Hettinger research extension center must be located in or near Hettinger in Adams County. The center shall develop the best available technology in breeding, feeding, management, and disease control pertinent to the production of sheep in the state. The center shall conduct research designed to increase productivity of all

agricultural products of the soil while maintaining or improving the soil resource base in southwestern North Dakota by:

1. The identification of adapted crop species and superior crop cultivars;
2. Propagation and distribution of selected seed stocks; and
3. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

15-12.1-12. North central research extension center.

The north central research extension center must be located in or near Minot in Ward County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of north central North Dakota by:

1. The identification of adapted crop species and superior crop cultivars;
2. Propagation and distribution of selected seed stocks; and
3. Development of profitable cropping systems which achieve the necessary balance between profitability and conservation of all natural resources.

15-12.1-13. Agronomy seed farm - Investment of reserve income fund.

At the direction of the center director of the agronomy seed farm with the approval of the station director, the state treasurer shall provide for the investment of available moneys in the agronomy seed farm reserve income fund. The state treasurer shall credit the investment income to the agronomy seed farm reserve income fund. The moneys in the fund may be spent only within the limits of legislative appropriation.

15-12.1-14. State board of agricultural research and education - Membership - Terms.

1. The state board of agricultural research and education consists of:
 - a. The president of North Dakota state university or the president's designee;
 - b. The vice president of agricultural affairs at North Dakota state university, who serves in an ex officio nonvoting capacity;
 - c. The administrator of the agricultural experiment station, who serves in an ex officio nonvoting capacity;
 - d. The five persons appointed to the state board of agricultural research and education by the ag coalition;
 - e. The five persons appointed to the state board of agricultural research and education by the extension service's multicounty program units;
 - f. The agriculture commissioner, who serves in an ex officio nonvoting capacity;
 - g. The director of the North Dakota state university extension service, who serves in an ex officio nonvoting capacity; and

- h. Two members of the legislative assembly appointed by the chairman of the legislative management. The chairman shall appoint one member from each political faction. The terms of members are for two years and members may be reappointed. The legislative council shall pay the compensation and expense reimbursement for the legislative members.
2. a. The initial five members appointed by the ag coalition shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
- b. The initial five members appointed by the extension service's multicounty program units shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
3. At the completion of each initial term, the term of office for each member is four years, beginning on July first. An individual may be reappointed to a second four-year term.
4. a. At least ninety days before the term of a member appointed by the ag coalition expires, the ag coalition shall provide to the state board of higher education a list of one or more names from which the state board of higher education shall appoint a successor. The state board of higher education shall ensure four out of the five seats are held by agricultural producers.
- b. At least ninety days before the term of a member appointed by the extension service's multicounty program units expires, the units through their advisory groups shall provide to the state board of higher education a list of one or more names from which the state board of higher education shall appoint a successor. The state board of higher education shall ensure four out of the five seats are held by agricultural producers.
5. If an appointed position becomes vacant, the vacancy must be filled for the unexpired portion of the term in the same manner as the initial appointment except that the ninety-day requirement is waived. An individual appointed under this subsection is eligible to serve two full terms after completing the unexpired term for which the individual was appointed.

15-12.1-15. Compensation of board members - Expenses.

Each appointed member of the state board of agricultural research and education is entitled to receive one hundred thirty-five dollars per day as compensation for the time actually spent devoted to the duties of office and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of office.

15-12.1-16. State board of agricultural research and education - Chairman - Meetings.

The state board of agricultural research and education shall elect one of its members annually to serve as chairman. The board shall meet at the times and locations designated by the chairman in consultation with the vice president of agricultural affairs at North Dakota state university.

15-12.1-17. State board of agricultural research and education - Duties.

Within the policies of the state board of higher education, the state board of agricultural research and education is responsible for budgeting and policymaking associated with the agricultural experiment station and the North Dakota state university extension service. The state board of agricultural research and education shall:

1. Determine the causes of any adverse economic impacts on crops and livestock produced in this state;
2. Develop ongoing strategies for the provision of research solutions and resources to negate adverse economic impacts on crops and livestock produced in this state;
3. Develop proactive strategies for the extension service to fulfill the mission of improving the lives and livelihood of the citizens of North Dakota by providing research-based education;
4. Implement the strategies developed under subsections 2 and 3, subject to approval by the state board of higher education;
5. Develop, with the agricultural experiment station and the North Dakota state university extension service, an annual budget for the operations of these entities;
6. Develop a biennial budget request based on its prioritized needs list and submit that request to the president of North Dakota state university and the state board of higher education, and forward its prioritized needs list and request without modification to the office of management and budget and the appropriations committees of the legislative assembly;
7. Maximize the use of existing financial resources, equipment, and facilities to generate the greatest economic benefit from research and extension efforts and to promote efficiency;
8. Annually evaluate the results of research and extension activities and expenditures and report the findings to the legislative management and the state board of higher education;
9. Advise the president of North Dakota state university regarding the recruitment, selection, and performance of the vice president of agricultural affairs, the extension service director, and the station director; and
10. Provide a status report to the budget section of the legislative management.

15-12.1-18. Agricultural research fund - Continuing appropriation.

The agricultural research fund is a special fund in the state treasury. Moneys in the fund are appropriated to the state board of agricultural research and education for purposes of agricultural research. Any interest earned by the fund must be returned to the fund.

15-12.1-19. State board of agricultural research and education - Apportionment of research funds.

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

SECTION 9. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Eggs - Labeling and temperature rules.

The state department of health may adopt appropriate rules under chapter 28-32 to establish standards for proper labeling and temperature during the retail storage and sale of shell eggs. As used in this section, "eggs" means eggs in the shell which are the product of a domesticated chicken.

SECTION 10. Chapter 54-60.3 of the North Dakota Century Code is created and enacted as follows:

54-60.3-01. Agricultural products utilization commission - Composition - Appointment.

The agricultural products utilization commission shall administer the agricultural products utilization fund. The commission shall consist of nine members, five of whom must be appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Three members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. The agriculture commissioner shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the commissioner must be actively engaged in farming in this state. Commission members may be reappointed. Terms of commissioners commence on the first day of July. The commissioner of commerce, the president of North Dakota state university, and the agriculture commissioner, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

54-60.3-02. Agricultural products utilization commission - Authority.

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources.
2. The commission may administer grant programs including:
 - a. A basic and applied research grant program;
 - b. A utilization and marketing grant program;
 - c. A cooperative marketing grant program;
 - d. A nature-based tourism grant program;
 - e. A technical assistance grant program for value-added businesses;
 - f. A farm diversification grant program;
 - g. An agricultural prototype development grant program;
 - h. An agricultural technologies grant program; and
 - i. A North American marketing grant program.
3. As a condition of any grant administered by the commission, the commission may require the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or any other type or method determined by the commission.

54-60.3-03. Agricultural products utilization commission - Meetings - Personnel - Reports.

The agricultural products utilization commission, an office of the department of commerce division of economic development and finance, shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ required personnel for the performance of its duties, hire

consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

54-60.3-04. Agricultural products utilization commission - Reimbursement - Compensation.

Members of the agricultural products utilization commission are entitled to be reimbursed for expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive per diem compensation of one hundred thirty-five dollars for each day of attending meetings and performing other duties relating to official business of the commission. The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

54-60.3-05. Agricultural products utilization commission - Administrative expenses.

Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of required personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds appropriated to the commission by the legislative assembly each biennium, excluding federal funds.

54-60.3-06. Agricultural products utilization fund - Purposes.

The agricultural products utilization fund in the state treasury must be used to fund programs for agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission. Interest earned on moneys in the fund must be credited to the fund.

²⁴ **SECTION 11. AMENDMENT.** Subsection 2 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

2. A county levying a tax for extension work as provided in section ~~4-08-1511-38-01~~ may levy a tax not exceeding two mills and if a majority of the electors of the county have approved additional levy authority under section ~~4-08-1511-38-01~~, the county may levy a voter-approved additional tax not exceeding ~~an additional tax~~ of two mills.

SECTION 12. LEGISLATIVE COUNCIL TO REDESIGNATE CHAPTERS IN TITLE 4.1 OF THE NORTH DAKOTA CENTURY CODE. The legislative council shall redesignate chapter 4.1-47 as chapter 4.1-24, chapter 4.1-83 as chapter 4.1-29, chapter 4.1-52 as chapter 4.1-42, chapter 4.1-53 as chapter 4.1-43, chapter 4.1-54 as chapter 4.1-44, chapter 4.1-55 as chapter 4.1-45, chapter 4.1-56 as chapter 4.1-46, chapter 4.1-57 as chapter 4.1-47, chapter 4.1-73 as chapter 4.1-49, chapter 4.1-74 as chapter 4.1-50, chapter 4.1-75 as chapter 4.1-51, chapter 4.1-72 as chapter 4.1-52, and chapter 4.1-88 as chapter 4.1-56.

SECTION 13. REPEAL. Chapters 4-01, 4-02, 4-02.1, 4-05.1, 4-08, 4-11.1, 4-13.2, 4-14, 4-14.1, 4-14.2, 4-19, 4-21.1, 4-21.2, 4-22, 4-23, 4-24, 4-30, 4-32, 4-33, 4-35,

²⁴ Section 57-15-06.7 was also amended by section 11 of Senate Bill No. 2206, chapter 341.

4-35.1, 4-35.2, 4-36, 4-37, 4-40, 4-41, 4-43, and 19-07 of the North Dakota Century Code are repealed.

SECTION 14. EFFECTIVE DATE. Section 11 of this Act is effective for taxable years beginning after December 31, 2016.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 62

SENATE BILL NO. 2236

(Senators Unruh, Armstrong, Oban)
(Representatives D. Anderson, Kempenich, Schatz)

AN ACT to amend and reenact section 04-01-31 of the North Dakota Century Code, relating to the pipeline restoration and reclamation oversight program and records of program participants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 04-01-31 of the North Dakota Century Code is amended and reenacted as follows:

4-01-31. Pipeline restoration and reclamation oversight ~~pilot~~ program - Generally.

1. The agriculture commissioner shall establish a ~~pilot~~ program ~~that shall to~~ provide technical assistance and support to surface owners and surface tenants on pipeline restoration and followup support to surface owners and surface tenants on pipeline reclamation.
2. The agriculture commissioner may contract for ombudsmen for the purposes of being a resource for technical assistance and followup on pipeline issues. The ombudsmen may not investigate or assist with any pipeline installed before January 1, 2006, or regulated by the public service commission under title 49, and may not assist in easement negotiations.
3. The ~~pilot~~ program may provide technical education, support, and outreach on pipeline-related matters in coordination with other entities.
4. The agriculture commissioner may contract with local individuals, deemed trustworthy by the surface owners and surface tenants, to be ombudsmen. The agriculture commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of surface owners and surface tenants who receive assistance under the program are exempt records as defined under section 44-04-17.1.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 63

SENATE BILL NO. 2313

(Senator Unruh)
(Representative Porter)

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to a wind energy restoration and reclamation oversight program; to amend and reenact sections 49-02-34 and 49-22-05.1 of the North Dakota Century Code, relating to annual reports on meeting renewable and recycled energy objectives and exclusion areas for wind energy conversion facilities; to provide a statement of legislative intent; and to provide for application.

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:

Wind energy restoration and reclamation oversight program.

1. The agriculture commissioner shall establish a program that provides technical assistance, support, and outreach to property owners on wind property restoration and followup support to property owners on wind property reclamation.
2. The agriculture commissioner may contract for ombudsmen for purposes of being a resource for technical assistance and followup on wind property issues. The ombudsmen may not investigate or assist in any easement negotiations.
3. The agriculture commissioner may contract with local individuals, deemed trustworthy by property owners, to be ombudsmen. The agriculture commissioner is not subject to chapter 54-44.4 when contracting for the services of ombudsmen.
4. The agriculture commissioner shall work in cooperation with the public service commission to carry out the duties described in this section.

SECTION 2. AMENDMENT. Section 49-02-34 of the North Dakota Century Code is amended and reenacted as follows:

49-02-34. Public reporting on progress toward meeting the renewable energy and recycled energy objective.

Commencing on June 30, 2009, retail providers shall report annually on the provider's previous calendar year's energy sales. This report must include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the objective over time and identifies any challenges or barriers encountered in meeting the objective. ~~The last annual report must be made on June 30, 2016.~~ Retail providers shall report to the public service commission, which shall make data and narrative reports publicly

available and accessible electronically on the internet. Distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency.

²⁵ **SECTION 3. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-05.1. Exclusion and avoidance areas - Criteria.

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.
2. Except for transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. ~~The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.~~
3. Areas less than one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The commission may grant a variance if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND RECLAMATION OVERSIGHT PROGRAM. It is the intent of the sixty-fifth legislative assembly that the agriculture commissioner establish the wind property restoration and reclamation oversight program, created in section 1 of this Act, using existing operating funds.

SECTION 5. APPLICATION. Section 3 of this Act applies only to projects that receive a certificate of site compatibility after August 1, 2017.

Approved April 20, 2017

Filed April 21, 2017

²⁵ Section 49-22-05.1 was also amended by section 8 of House Bill No. 1144, chapter 328.

CHAPTER 64

HOUSE BILL NO. 1342

(Representatives D. Johnson, Boschee, Monson, Schreiber-Beck)
(Senators Luick, Oban, Piepkorn)

AN ACT to amend and reenact sections 4.1-16-05, 4.1-16-09, and 4.1-16-11 of the North Dakota Century Code, relating to beekeeping.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-16-05 of the North Dakota Century Code is amended and reenacted as follows:

4.1-16-05. License - Grounds for denial.

1. The agriculture commissioner may suspend, revoke, or refuse to grant a license to any person who:
 1. a. Has repeatedly violated this chapter;
 2. b. Failed to pay an adjudicated civil penalty for violating this chapter, within thirty days after a final determination that the civil penalty is owed; or
 3. c. Provided false or misleading information in connection with any application or notification required by this chapter.
2. Any person denied a license under this section may request a hearing before the commissioner within thirty days after the date of the denial.

SECTION 2. AMENDMENT. Section 4.1-16-09 of the North Dakota Century Code is amended and reenacted as follows:

4.1-16-09. Identification of apiary.

1. A beekeeper shall identify each apiary for which the beekeeper is responsible by:
 - a. Affixing a three-digit identification number, assigned by the agriculture commissioner, ~~to the uppermost box of a hive~~ that is prominently displayed and visible upon approach to the apiary's main entrance, provided each digit is at least three inches [7.62 centimeters] high, one-half inch [1.27 centimeters] wide, and weather-resistant; and
 - b. Displaying the beekeeper's name and phone number in a location that is prominently displayed and visible upon approach to the apiary's main entrance, provided the numbers and letters used are at least one and one-half inches [3.81 centimeters] high and weather-resistant.
2. Any apiary that is not identified, as required by this section, may be subject to seizure by the commissioner.

SECTION 3. AMENDMENT. Section 4.1-16-11 of the North Dakota Century Code is amended and reenacted as follows:

4.1-16-11. Confiscation and disposal.

Except as provided for in section 4.1-16-10, the agriculture commissioner or a law enforcement officer may confiscate bees, hives, or beekeeping equipment, being transported or maintained in violation of this chapter. Any bees, hives, or beekeeping equipment, confiscated under this section, must be disposed of pursuant to a court order or an administrative order issued by the commissioner, unless the beekeeper or other responsible person appears to claim the property and pay any costs incurred by the commissioner due to the confiscation and any civil penalties imposed under this section.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 65

SENATE BILL NO. 2029

(Legislative Management)
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-18, 4.1-20, 4.1-21, 4.1-22, and 4.1-48 of the North Dakota Century Code, relating to revisions of agriculture laws regarding industrial hemp, soil conservation districts laws, forestry and tree distribution, nurseries, and potato production contracts; to amend and reenact section 57-38-34.6 of the North Dakota Century Code, relating to optional contributions to the trees for North Dakota program trust; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-18 of the North Dakota Century Code is created and enacted as follows:

4.1-18-01. Industrial hemp (cannabis sativa L.) - Oilseed.

Industrial hemp (cannabis sativa L.), having no more than three-tenths of one percent tetrahydrocannabinol, is recognized as an oilseed. Upon meeting the requirements of section 4.1-18-02, any person in this state may plant, grow, harvest, possess, process, sell, and buy industrial hemp (cannabis sativa L.) having no more than three-tenths of one percent tetrahydrocannabinol.

4.1-18-02. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.

1. Any person desiring to grow or process viable kernels of industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner.
 - a. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp.
 - b. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant.
 - c. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure.
 - d. Any person with a prior criminal conviction may be denied licensure.

- e. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year.
 - f. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes or research.
 - g. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency.
 - h. This subsection does not apply to any person licensed by the United States drug enforcement agency to conduct research.
 - i. An application for a license under this subsection may be filed with the commissioner at any time.
2. a. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp.
 - b. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, and the names of the persons to whom the hemp was sold or distributed.
3. The commissioner shall adopt rules to provide for oversight of the industrial hemp during growth, harvest, and processing and to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels.
 4. The commissioner shall assess each applicant a fee of one hundred fifty dollars plus twenty-five dollars per acre.
 5. Fees collected under this chapter must be deposited in the commissioner's operating fund and are appropriated to the department on a continuing basis for the purpose of enforcing this chapter.

4.1-18-03. Industrial hemp seed - Authorized activity - Research.

The agriculture commissioner, North Dakota state university, and any other person licensed under this chapter may import, resell, and plant industrial hemp seed, cultivate the growing plant, and harvest any resulting crop, for any legally permissible purpose, including an authorized pilot program or other agricultural research involving the planting, cultivating, or marketing of industrial hemp.

SECTION 2. Chapter 4.1-20 of the North Dakota Century Code is created and enacted as follows:

4.1-20-01. Policy and scope of chapter.

It is the policy of this state and within the scope of this chapter to provide for the conservation of the soil and soil resources of this state and for the control and prevention of soil erosion, and to preserve the state's natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

4.1-20-02. Definitions.

In this chapter, unless the context otherwise requires:

1. "Committee" means the state soil conservation committee.
2. "Director" means the director of the North Dakota state university extension service.
3. "District" means a political subdivision of this state organized as a soil conservation district under this chapter.
4. "Due notice" means notice published at least twice, with at least seven days between publications, in a newspaper or other publication of general circulation within the appropriate area.
5. "Government" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.
6. "Land occupier" includes any person that holds title to or is in possession of any lands lying within a district.
7. "Qualified elector" means an individual who is at least eighteen years old, is a citizen of the United States, and has resided in the precinct thirty days next preceding the election.
8. "Supervisor" means one of the members of the governing body of a district, elected or appointed, in accordance with this chapter.

4.1-20-03. State soil conservation committee - Elective and appointive members - Records and seal.

1. The committee shall perform the functions conferred upon it in this chapter within the limits of legislative appropriations. The committee consists of seven voting members. Five members must be elected and two must be appointed by the governor.
2. For the purpose of electing the five elective members of the committee, the state is divided into five areas.
 - a. (1) Area I includes Benson, Cavalier, Eddy, Foster, Grand Forks, Nelson, Pembina, Ramsey, Towner, Walsh, and Wells Counties.
 - (2) Area II includes Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and Traill Counties.
 - (3) Area III includes Bottineau, Burke, Divide, McHenry, Mountrail, Pierce, Renville, Rolette, and Ward Counties.
 - (4) Area IV includes Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Morton, Oliver, Sheridan, Sioux, and Stutsman Counties.
 - (5) Area V includes Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Stark, Slope, and Williams Counties.

- b. One member of the committee must be elected from each of the five areas by vote of the members of the boards of supervisors of the districts in that area. Every voting member of a board of supervisors of a district organized under this chapter is eligible to vote in the election for a member of the committee in the area in which the district is located.
 - c. Elections must be held under rules adopted by the committee and in cooperation with and at the time of the North Dakota association of soil conservation districts area meetings. If the district does not lie wholly within the boundaries of one of the five areas established under this section, the rules must provide for the assignment of the district by the committee, for the purposes of the elections, to the area within which most of its population resides.
 - d. The committee shall conduct the election of members of the committee. The election need not be held on the same dates or in the same places as the general elections for state or local officers.
3. The governor shall appoint two members of the committee. The governor shall appoint individuals who can represent those interests within the state not already represented, or less fully represented, by one or more of the five elected members of the committee. The governor shall attempt, so far as feasible, to make possible suitable representation for all interests in the state in the membership of the committee, including the interests of farmers, livestock growers, rural areas, small and large cities, and industry and business, recognizing that any single member of the committee may sometimes appropriately be regarded as representing more than one of these interests.
4. The committee shall invite representatives of the state association of soil conservation districts, North Dakota state university extension service, soil conservation service, state water commission, agriculture commissioner, and game and fish department to serve as advisory, nonvoting members of the committee.
5. The term of office of every member of the committee is three years and until a successor is elected or appointed. A member of the committee is eligible for re-election and reappointment, but no member may serve for more than two full, successive terms. The governor may fill a vacancy in either an elective or appointive term for the unexpired term.

4.1-20-04. Committee - Chairman - Quorum - Compensation.

The committee shall meet annually and select its chairman, who shall serve until a successor is selected and takes office. An individual may be selected as chairman for a total of three terms. Additional meetings may be held by the committee as considered necessary by the chairman, at a time and place to be fixed by the chairman. The chairman shall call special meetings upon written request of any four members. The members of the committee are entitled to receive one hundred thirty-five dollars per day as compensation for their services on the committee, and are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials.

4.1-20-05. Duties and powers generally.

The committee has the following duties and powers:

1. To offer such assistance as may be appropriate to the supervisors of districts in the carrying out of any of their powers and programs.
2. To keep the supervisors of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience among such districts and cooperation among them.
3. To secure the cooperation and assistance of state, federal, regional, interstate, and local, public, and private agencies with districts and to facilitate arrangements under which districts may assist or serve county governing bodies and other agencies in the administration of any activity concerned with the conservation of natural resources.
4. To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with state, federal, interstate, or other public or private organizations, and advise the districts concerning such agreements or forms of agreement.
5. To recommend to the director biennial budgets necessary to finance the activities of the committee and districts and to distribute moneys appropriated by the legislative assembly for grants to soil conservation districts.
6. To represent the state in matters affecting soil conservation.
7. To require annual reports from districts.
8. To establish uniform accounting methods that must be used by districts, and to establish a uniform auditing reporting system.
9. To receive from other state and local agencies for review and comment suitable descriptions of their plans, programs, and activities affecting the conservation of natural resources for purposes of coordination with district conservation programs; arrange for and participate in conferences necessary to avoid conflict among such plans and programs; call attention to omissions; and avoid duplication of effort.

4.1-20-06. Extension service assistance to state soil conservation committee - Duties.

The North Dakota state university extension service shall assist the committee in performing the committee's duties, within the limits of legislative appropriation. The director shall instruct extension agents to cooperate in the delivery of information and services to the districts.

4.1-20-07. Districts - Petition - Contents - More than one petition filed.

1. Any twenty-five qualified electors living within the limits of the area proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized in the area described in the petition. The petition must set forth:
 - a. The proposed name of the district.

- b. The need for a soil conservation district to function in the area described in the petition.
 - c. A description of the area proposed to be organized as a district.
 - d. A request that the state soil conservation committee duly define the boundaries for the district, that an election be held within the defined area on the question of the creation of a soil conservation district in that area, and that the committee determine that such a district be created.
2. When more than one petition is filed covering parts of the same area, the state soil conservation committee may consolidate all or any of such petitions.

4.1-20-08. Hearings on petitions - When held - Notice - Determinations.

1. Within thirty days after a petition under section 4.1-20-07 has been filed, the state soil conservation committee shall cause publication of due notice of a hearing on the desirability of creation of a soil conservation district, the appropriate boundaries to be assigned to the district, the propriety of the petition and the other proceedings taken under this chapter, and upon all other relevant questions. All qualified electors living within the area described in the petition, and of lands within any area considered for addition to the area described in the petition, and all other interested parties have the right to attend and be heard at the hearing. If it appears at the hearing that it may be desirable to include within the proposed district additional area outside of the area within which due notice of hearing has been given, the hearing must be adjourned and due notice of further hearing must be given throughout the entire area considered for inclusion in the district, and further hearing must be held.
2. If the committee determines, upon the facts presented at the hearing and upon other available relevant facts and information, there is need, in the public interest, for a soil conservation district to function in the area considered at the hearing, the committee shall record that determination and define the district boundaries by metes and bounds or legal subdivisions. In making the determination and defining the boundaries, the committee shall give due weight and consideration to:
 - a. The topography of the area considered and of the state;
 - b. The composition of soils, distribution of erosion, prevailing land use practices, and desirability and necessity of including within the boundaries the area under consideration;
 - c. The benefits the area may receive from being included within such boundaries;
 - d. The relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under this chapter; and
 - e. Any other relevant physical, geographic, and economic factors, having due regard to the legislative policy set forth in section 4.1-20-01.
3. If the committee determines, after the hearing and due consideration of the relevant facts, there is no need for a soil conservation district to function in the

area considered at the hearing, the committee shall record that determination and deny the petition. After six months has expired from the date of the denial of that petition, a subsequent petition covering the same or substantially the same area may be filed and a new hearing held and new determinations made.

4.1-20-09. Election - When held - Contents of ballot - Who may vote.

After the committee has determined the necessity for the organization of a district and has defined the boundaries of the proposed district, the committee shall hold an election within the proposed district upon the creation of the proposed district and shall cause due notice of the election to be given. The question must be submitted by ballot in substantially the following form:

Shall a soil conservation district be created embracing lands situated in the counties of _____ and _____ and described as follows: (Here inserting description).

Yes

No

All qualified electors residing within the boundaries of the proposed district are entitled to vote in the election.

4.1-20-10. Publication of election results - Determination of feasibility of operation of district.

The committee shall publish the results of any election. If a majority of the votes cast are in favor of the creation of a district, the committee shall determine whether the operation of a district within the boundaries specified on the election is administratively feasible. In making that determination, the committee shall consider such factors, objects, and other determinations as to accomplish the policy and scope of this chapter as set forth in section 4.1-20-01.

4.1-20-11. District determined feasible - Statement filed with secretary of state.

If the committee determines the operation of a proposed district is administratively feasible, the committee shall file with the secretary of state a certified statement identifying the boundaries and name of that district. The statement must include the reasons for the formation of the district and the result of the election.

4.1-20-12. District to be a political subdivision - Boundaries of district.

Upon the certification by the committee to the secretary of state under section 4.1-20-11, the district becomes a political subdivision of the state and a body corporate and politic. The secretary of state shall issue to the committee a certificate of the due organization of the district under the seal of the state and record the certificate with the application and statement. The boundaries of the district include the area as determined by the committee, but may not include any area included within the boundaries of another soil conservation district.

4.1-20-13. Petition to include additional area within existing district.

Petitions to include additional area within an existing district may be filed with the committee at any time, and the proceedings provided in connection with a petition to organize a district must be observed in the case of a petition for such inclusion. A

portion of a district may upon petition of a majority of the qualified electors in that portion, and without an election, be annexed to an adjoining district, and become a part of that adjoining district upon filing the petition with the state soil conservation committee.

4.1-20-14. Districts presumed to be organized legally - Copy of certificates as evidence.

In any suit, action, or proceeding involving or relating to the validity or enforcement of any contract, proceeding, or action of a district, the district is deemed to have been established in accordance with the provisions of this chapter, upon proof of the issuance of the certificate of organization by the secretary of state. A copy of the certificate, when duly certified by the secretary of state, is admissible in evidence in any suit, action, or proceeding and is proof of the filing and its contents.

4.1-20-15. Notice to file nominating petitions and of election of district supervisors.

As soon as practicable after the issuance by the secretary of state of the certificate of organization of a soil conservation district, and before the next general election, the committee shall give notice that nominating petitions may be filed with the county auditor, and that at the next general election held in the district three supervisors must be elected, who must be land occupiers of the district and who constitute the governing body of the district.

4.1-20-16. Nominating petitions - Petitions required - Final filing date.

Any individual running for the office of supervisor shall present to the county auditor of the county in which the district lies a petition giving that individual's name and mailing address and the title and term of the office, and containing the signatures of not less than twenty-five nor more than three hundred qualified electors of the district. When a district lies in more than one county, the petition must be filed with the county auditor of the county where the candidate resides, and that county auditor shall certify to the county auditors of the other counties in which the district lies the name and mailing address of the candidate filing such petition. At the same time, the county auditor, or auditors in the case of multicounty districts, also shall certify to the secretary of state the name and mailing address of each individual filing a nominating petition according to this section. An individual may not participate directly or indirectly in the nomination for more than one individual for each office to be filled. The final filing date for nominating petitions is no later than four p.m. sixty-four days before the day of the election.

Upon receipt of the petition or the certification as provided in this section, the county auditor shall place, without fee, the name of the candidate so nominated on the no-party ballot at the ensuing general election.

4-1-20-17. 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 campaign and be elected as a write-in candidate for the office.

4.1-20-18. Supervisors - Terms of office - Vacancies - Removal - Compensation - Expenses.

1. At each general election, one district supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. The county auditor of the county or counties in which the district lies shall return to the secretary of state before four p.m. on the tenth day following any general election a certified abstract of the votes cast in the county at the election for each candidate for district supervisor. The secretary of state shall canvass the returns and issue certificates of election under chapter 16.1-15.
2. To be eligible for election to the office of district supervisor, candidates must be land occupiers and physically living in the district. Candidates must be elected on a nonpartisan ballot. If the office of any supervisor becomes vacant, the remaining members of the board of supervisors, with the advice and consent of the committee, shall fill the vacancy by appointment. If vacancies occur in the office of two supervisors, the remaining supervisor and the committee shall fill the vacancy. If the offices of all supervisors of a district become vacant, the committee shall fill the vacancies by appointment. A supervisor appointed to fill a vacancy holds office until the next general election. A supervisor elected to fill a vacancy serves the balance of the unexpired term in which the vacancy occurred.
3. Upon resolution of the three elected supervisors, a soil conservation district, may appoint two additional supervisors who shall serve for a term of one year from the date of appointment. Those supervisors must be appointed by a majority of the three elected supervisors and have all the powers, voting privileges, duties, and responsibilities of elected supervisors, except that the expense allowances of the appointed supervisors must be paid by the local soil conservation district concerned. As far as possible, the appointed supervisors shall represent interests within the district which are not represented by the elected supervisors.
4. After notice given and hearing held in accordance with chapter 28-32, a supervisor of a soil conservation district may be removed from office by the committee.
5. Upon a majority vote of the supervisors, the supervisors of a soil conservation district are entitled to receive compensation of up to sixty-two dollars and fifty cents for attending each regular or special meeting or for attending other meetings or events in the performance of their official duties. Supervisors of soil conservation districts are entitled to receive travel and subsistence expenses necessarily incurred in attending district, state, or other meetings. The compensation and all other expenses including travel incurred by district supervisors while transacting district business must be paid from district funds.

4.1-20-19. Soil conservation district supervisors - Training.

As soon as practicable after an individual is elected or appointed to the position of a soil conservation district supervisor, the individual shall attend a training session delivered by the state soil conservation committee. An individual who has attended a training session as an elected or as an appointed soil conservation district supervisor may not be required to attend any additional or subsequent session.

4.1-20-20. Supervisors may employ assistants - Attorney general and state's attorneys to advise - Reports to committee.

The supervisors may employ necessary permanent and temporary officers, agents, or employees, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general or the state's attorney of any county in which the district is situated for those legal services as the supervisors may require. The supervisors may delegate to their chairman or to any of their number such duties as they may deem proper and shall furnish to the committee, upon request, copies of any ordinances, rules, regulations, orders, contracts, or other documents the supervisors adopt or employ, and any other information concerning their activities as the committee may require.

4.1-20-21. Assistance for district supervisors.

Upon request of the supervisors of a soil conservation district, a board of county commissioners may assign an employee or employees of the county to assist the supervisors in the performance of the supervisors' duties authorized by this chapter. The board of county commissioners of each county within a soil conservation district may provide assistance for the supervisors. The duties of the employee or employees are under the direct supervision of the supervisors of the soil conservation district.

4.1-20-22. Supervisors to provide for surety bonds, keeping records, and annual audit.

The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property of the district, for the keeping of a full and accurate record of all the supervisors' proceedings and of all resolutions, regulations, and orders issued or adopted by the supervisors, and for an annual audit of the accounts of receipts and disbursements of the district. The surety bonds provided for in this section may be issued by the state bonding fund.

4.1-20-23. Supervisors may consult city or county representatives.

The supervisors may invite the governing body of any city or county located within or near the district to designate a representative to advise and consult with the supervisors on issues that may affect the property, water supply, or other interests of the city or county.

4.1-20-24. Powers and duties of districts and supervisors.

1. A soil conservation district may exercise the public powers ordinarily exercised by a political subdivision of the state, and the district and the supervisors of the district have the following powers in addition to those granted in other sections of this chapter:
 - a. To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed; to publish the results of those surveys, investigations, or research; and to disseminate information concerning the preventive and control measures. To avoid duplication of research activities, a district may not initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies.
 - b. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other

- lands within the district after obtaining the consent of the occupier of those lands or the necessary rights or interests in those lands, to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled.
- c. To carry out preventive and control measures within the district, including engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other lands within the district upon obtaining the consent of the occupier of those lands or the necessary rights or interest in those lands.
 - d. To cooperate or enter agreements with, and, within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion control and prevention operations within the district, subject to the conditions as the supervisors may deem necessary to advance the purposes of this chapter.
 - e. To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property, real or personal, or any property rights or interest; to maintain, administer, and improve any properties acquired; to receive income from those properties and to expend that income in carrying out the purposes and provisions of this chapter; and to sell, lease, or dispose of otherwise any of its property or interest therein in furtherance of the purposes and the provisions of this chapter.
 - f. To make available, on terms the soil conservation district prescribes, to land occupiers, government units or qualified electors within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and any other material or equipment as will assist those land occupiers, government units or qualified electors to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion.
 - g. To construct, improve, and maintain structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.
 - h. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans must specify in such detail as may be possible the acts, procedures, performances, and avoidances that are necessary or desirable for the effectuation of those plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to publish such plans and information and bring them to the attention of occupiers of lands within the district.
 - i. To take over, by purchase, lease, or otherwise, and to administer any soil conservation, erosion control, or erosion prevention project located within its boundaries undertaken by the United States or any of its agencies, or

by this state or any of its agencies; to manage, as agent of the United States, or any of its agencies or of this state or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries; and to accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies or from this state or any of its agencies, and to use or expend those moneys, services, materials, or other contributions in carrying on its operations.

- j. To sue and be sued in the name of the district.
- k. To have a seal, which seal must be noticed judicially.
- l. To have perpetual succession unless terminated as provided in this chapter.
- m. To make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to borrow funds and pledge all or any part of any income from the district's facilities, equipment, and operations for repayment.
- n. To make, amend, or repeal regulations consistent with this chapter.
- o. To require contributions in money, services, materials, or otherwise to any operations conferring benefits under this chapter and to require land occupiers to enter and perform agreements or covenants to use the lands in a manner that will prevent or control erosion.
- p. To expend moneys for education, promotion, and recognition activities consistent with the purposes of this chapter.
- q. To levy taxes as follows:
 - (1) The supervisors may make a general fund tax levy, not exceeding two and one-half mills, for the payment of the expenses of the district, including mileage and other expenses of the supervisors, and technical, administrative, clerical, and other operating expenses.
 - (2) Immediately after the completion of the district budget and the adoption of the annual tax levy by the district supervisors, but not later than July first, the supervisors shall send one certified copy of the levy as adopted to the county auditor of each county in the district.
 - (3) The county auditor of each county in the district shall extend the levy upon the tax list of the county for the current year against each description of real property lying both within the county and the district in the same manner and with the same effect as other taxes are extended.
 - (4) The treasurer of each county in the district shall collect all district taxes together with interest and penalty thereon in the same manner as the general taxes are collected, and shall pay over to the soil conservation

district by the tenth working day of each month, all taxes so collected during the preceding month, with interest and penalties collected thereon and shall immediately send notification of such payment to the treasurer of the soil conservation district.

(5) Voter-approved levy authority authorized by electors of a district under the provisions of this section before January 1, 2015, remains in effect through taxable year 2024 or for the time period authorized by the electors, whichever expires first.

2. Any provisions with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to a district unless the same specifically are made applicable by law.

4.1-20-25. Supervisors may formulate land use regulations for submission to qualified electors.

The supervisors of any district may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion, and may conduct public meetings and hearings upon tentative regulations as may be necessary to assist the supervisors in this work. The proposed regulations must be embodied in a proposed ordinance for submission to the qualified electors in the district, and copies of the proposed ordinance must be available for inspection by the qualified electors in the district during the period of time between the publication of the notice of election upon the ordinance and the date of the election.

4.1-20-26. Notice of election - Form of ballot - Conduct of election - Who may vote.

The notice of election on a proposed ordinance submitted to the qualified electors in the district under section 4.1-20-24 must be provided in the manner required by section 4.1-20-14 relating to notice of election of supervisors, and must recite the contents of the proposed ordinance or must state where copies of the proposed ordinance may be examined. The question of adoption or rejection of the proposed ordinance must be submitted by ballot at an election to be held in the district. The ballot must be in substantially the following form:

Shall proposed ordinance number _____, prescribing land use regulations for conservation of soil and prevention of erosion be adopted?

Yes _____

No _____

The supervisors shall supervise the election, prepare appropriate regulations governing the conduct of the election, and publish the result of the election. The right to vote in the election is limited to qualified electors residing within the district. No informalities in the conduct of the election or in any matters relating to the election may invalidate the election or its result if the notice of election has been given substantially as required by this section and the election has been fairly conducted.

4.1-20-27. Two-thirds voter approval required to adopt ordinance - Effect of ordinance after adoption.

An ordinance under this chapter does not become effective unless it is approved by at least two-thirds of the qualified electors voting on the question. If a proposed

ordinance is approved, the supervisors shall enact it into law. Land use regulations prescribed in any ordinance adopted by the supervisors pursuant to this section have the force and effect of law in the district and are binding and obligatory upon all qualified electors living within the district.

4.1-20-28. What may be contained in land use regulations.

The land use regulations that may be adopted by the supervisors under this chapter may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.
2. Provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, stripcropping, and seeding and planting of lands to water conserving and erosion-preventing plants, trees, and grasses, forestation, and reforestation.
3. Specifications of cropping programs and tillage practices to be observed.
4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be controlled adequately if cultivation is carried on.
5. Provisions for any other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control soil erosion in the district, having due regard to the declaration of policy set forth in this chapter.

4.1-20-29. Regulations to be uniform - Copies furnished in district.

Land use regulations must be uniform throughout the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type. Copies of land use regulations adopted under this chapter must be printed and made available to all qualified electors living within the district.

4.1-20-30. Amending, supplementing, or repealing land use regulations.

Any qualified elector living within a district at any time may file a petition with the supervisors asking that any or all of the land use regulations in any ordinance adopted by the supervisors under this chapter be amended, supplemented, or repealed. Land use regulations in that ordinance may not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this chapter for the adoption of land use regulations. Elections on adoption, amendment, supplementation, or repeal of land use regulations may not be held more than once in any six-month period.

4.1-20-31. Supervisors to enforce land use regulations.

The supervisors may enter upon any land within the district to determine whether land use regulations adopted under this chapter are being observed.

4.1-20-32. Failure to perform land use regulations - Hearing on - Supervisors to perform - Costs and expenses.

1. If the supervisors of any district find any land use regulations prescribed in any ordinance are not being observed on particular lands, tending to increase erosion on those lands and interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court a duly verified petition setting forth:
 - a. The adoption of the ordinance prescribing land use regulations;
 - b. The alleged failure of the defendant land occupier to observe the regulations and perform particular work, operations, or avoidances required by the regulations and that the failure tends to increase erosion on those lands and interfere with the prevention or control of erosion on other lands within the district; and
 - c. Requesting that the court order the defendant to perform the work, operations, or avoidances within a reasonable time and that if the defendant fails to do so, the supervisors may:
 - (1) Enter upon the land;
 - (2) Perform the necessary work to bring the condition of the land into conformity with the regulations; and
 - (3) Assess the costs and expenses of the work, with interest, to the defendant.
2. Upon presentation of a petition under subsection 1, the court shall cause process to be issued against the defendant, and shall hear the case.
 - a. If it appears to the court testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law.
 - b. If a referee is appointed, the report of the referee constitutes a part of the proceedings upon which the determination of the court must be made.
 - c. The court may dismiss the petition or it may order the defendant to perform the work, operations, or avoidances. The court may provide upon the failure of the defendant to initiate performance as ordered by the court within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the necessary work to bring the condition of the land into conformity with the regulations and assess the costs and expenses of the work, with interest at the rate of five percent per annum, to the defendant.
 - d. If the person in possession of lands subject to a petition under subsection 1 is other than the owner, the owner of those lands must be joined as a party defendant. In all cases, notice must be given to all other interested parties in person, or by publication in the manner provided in this chapter for publication of due notice.

- e. In any case under this section, the court shall retain jurisdiction until any work ordered by the court has been completed.
3. Upon completion of any work ordered by the court under subsection 2, the supervisors may file a petition with the court and serve a copy upon the defendants, stating the costs and expenses sustained by the supervisors in the performance of the work and asking for judgment in that amount, with interest. The court may enter judgment for the amount of costs and expenses approved by the court plus interest at the rate of five percent per annum until paid. The supervisors may certify to the county auditor of the county in which the district is located the amount of the judgment, which is a lien upon the lands and must be collected as taxes or assessments are collected. As the judgment is paid or collected, the proceeds must be paid over to the district that certified the judgment to the auditor.

4.1-20-33. Board of adjustment - Members - Appointment - Vacancies - Compensation.

When the supervisors of any district adopt an ordinance prescribing land use regulations, the supervisors shall provide by ordinance for the establishment of a board of adjustment to consist of three members, each to be appointed for a term of three years, except the members first appointed who are appointed for terms of one, two, and three years respectively. The members of each board of adjustment must be appointed by the committee with the advice and approval of the supervisors of the district for which the board has been established, and are removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason. A hearing on the removal of a member of a board of adjustment must be conducted jointly by the committee and the supervisors. A vacancy on a board of adjustment must be filled in the same manner as the original appointment except the appointment is for the unexpired vacant term. Members of the committee and the supervisors of the district may not serve as members of the board of adjustment. The members of the board shall receive five dollars a day for the time spent on the work of the board in addition to their expenses, including traveling expenses necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board.

4.1-20-34. Board of adjustment - Rules - Chairman - Meetings - Quorum - Records.

The board of adjustment shall adopt rules to govern its procedure, in accordance with this chapter and any ordinance adopted under this chapter. The board shall designate, and may replace at any time, a chairman from among its members. Meetings of the board must be held at the call of the chairman and at any other time as the board may determine. Any two members of the board constitute a quorum. The chairman, or another member of the board designated by the chairman to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board are open to the public. The board shall keep a full and accurate record of its proceedings, all documents filed with it, and all orders entered by the board. The record must be filed in the office of the board and is a public record.

4.1-20-35. Petition to board of adjustment to vary land use regulations - Service - Hearing - Board's powers.

Any qualified elector residing in the district may file a petition with the board of adjustment seeking a variance from strictly complying with the land use regulations.

Copies of a petition must be served upon the chairman of the supervisors of the district where the lands are located and upon the chairman of the committee. The board shall fix a time for the hearing of the petition and cause due notice of the hearing to be given. The petitioner may appear in person, by agent, or by attorney at the hearing and the supervisors and the committee may appear and be heard. If the board determines on the facts presented at the hearing that there are great practical difficulties or unnecessary hardships in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, the board shall make and record the determination and findings of fact as to the specific conditions that establish the great practical difficulties or unnecessary hardships. Upon the findings and determination, the board may enter an order authorizing a variance from the terms of the land use regulations in its application to the lands of the petitioner consistent with the spirit of the land use regulations, and with substantial justice and the public health, safety, and welfare.

4.1-20-36. Taking of testimony at hearing.

At the request of the board of supervisors, the testimony at a hearing conducted under section 4.1-20-35 must be taken by a court reporter, by a stenographer, or by use of an electronic recording device. The board of supervisors is responsible for the cost of taking testimony.

4.1-20-37. Aggrieved petitioner and supervisors may appeal to district court from order of board - Procedure.

Any petitioner or the supervisors of any district may appeal an order of a board of adjustment to the district court as provided in section 28-34-01.

4.1-20-38. Cooperation among district supervisors.

The supervisors of any two or more districts organized under this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

4.1-20-39. State agencies to cooperate with district supervisors.

Agencies of this state having jurisdiction over any state-owned lands, and agencies of any county or other political subdivision of this state having jurisdiction over any county-owned or other publicly owned lands lying within the boundaries of any district shall cooperate to the fullest extent with the supervisors of the district in the effectuation of programs and operations undertaken by the supervisors under this chapter. The supervisors have free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted under this chapter have the force and effect of law over all such publicly owned lands and must be in all respects observed by the agencies administering such lands.

4.1-20-40. Discontinuance of districts - Petition - Referendum - Eligible qualified electors.

Five years after the date a district was organized, twenty-five percent of the qualified electors living within the boundaries of the district may file a petition with the state soil conservation committee to terminate the operations of the district. The committee then shall conduct public hearings upon the petition to determine whether there is sufficient basis for an election to be held. If the committee determines there is sufficient basis for an election, the committee shall give due notice of the holding of an election and shall issue appropriate regulations governing the conduct of the election within sixty days after the committee has made its determination. The

question to be voted on at the election must be submitted by ballot in substantially the following form:

Should the (insert name of district) be terminated? Yes _____

No _____

All qualified electors residing within the boundaries of the district are eligible to vote in the election. The committee shall supervise the election. Informalities in the conduct of the election or in any matters relating to the election do not invalidate the election or its result if notice of the election has been given substantially as required by this chapter and the election has been fairly conducted.

4.1-20-41. Duties of committee after election on discontinuance of the district has been held.

The committee shall publish the result of any election on the question of discontinuance of a district immediately after the vote has been had. If a majority of the votes cast in the election favored the discontinuance of the district, the committee shall make its certificate that it has determined that the continued operation of the district is not administratively feasible. If a majority of the votes cast in the referendum favored the continuance of the district, the committee shall consider and determine whether the continued operation of the district within the defined boundaries is administratively feasible. If the committee determines the continued operation of the district is administratively feasible, the committee shall record that determination and deny the petition for discontinuance, and if the committee determines the continued operation thereof is not administratively feasible, the committee shall record the determination and certify its determination to the supervisors of the district. In making its determination, the committee shall give due weight and regard to the number and attitudes of the qualified electors residing within the district, the number voting in the referendum, the proportion that the votes cast in favor of the discontinuance of the district are of the total number of votes cast, the probable expense of carrying on erosion control operations within the district, and any other economic and social factors as may be relevant to the determination having regard to the legislative policy as set forth in this chapter.

4.1-20-42. Termination of affairs of district - Disposal of property - Certificate of dissolution.

Upon receipt from the committee of its certification that the committee has determined the continued operation of the district is not administratively feasible, the supervisors shall proceed to terminate the affairs of the district. The supervisors of the district may dispose of all or part of any property belonging to the district at public auction and shall use the proceeds of the sale to pay any liabilities. The balance of any funds and undisposed property becomes the property of the county or counties the district is a part of as directed by the supervisors. The supervisors thereupon shall file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with such application the certificate of the committee setting forth its determination that the continued operation of the district is not administratively feasible. The application must recite what property, if any, of the district has been disposed of, the liabilities paid, and the property or proceeds paid over as provided herein and must set forth a full accounting of such properties and their sale proceeds. The secretary of state shall issue to the supervisors a certificate of dissolution and record the certificate in an appropriate record in the secretary of state's office.

4.1-20-43. Ordinances, regulations, and contracts of districts after dissolution.

After a certificate of dissolution has been issued as provided in section 4.1-20-42, all ordinances and regulations that have been adopted and in force within the dissolved district are of no further force and effect. All contracts that have been made, to which the district supervisors are parties, remain in force and effect for the period provided in the contracts, and the committee is substituted for the district or supervisors as party to the contracts. The committee is entitled to all the benefits and subject to all the liabilities under the contracts and has the same right as the supervisors of the district would have had.

4.1-20-44. Petitions for discontinuance of district - Limitation on filing.

The state soil conservation committee may not entertain petitions for the discontinuance of any district, conduct elections upon those petitions, or make determinations pursuant to the petitions in accordance with the provisions of this chapter more than once in any five-year period.

4.1-20-45. Consolidation of districts - Petition - Election - Conduct of election.

Two or more districts may be consolidated into one district by compliance with this chapter. A petition for consolidation of soil conservation districts must be filed with the state soil conservation committee and must be signed by at least twenty-five qualified electors living in each district. Upon the filing of a petition, the committee by resolution shall fix a date for an election to be held in each district and shall direct the supervisors to cause notice of the election to be posted in at least five conspicuous places within the district and to be published once each week for two consecutive weeks before the election in a newspaper of general circulation in the districts involved. Only qualified electors living within the district are eligible to vote at the election. The notice must state the date of the election, identify each polling place for holding the election, the time when the polls will open and close, and the question to be submitted to the qualified electors. The notice must be substantially in the following form:

On _____, an election will be held at

_____ for the purpose of submitting

(Designate polling place or places)

to the qualified electors within _____ soil conservation

(Name of district)

district the question as to whether _____ soil conservation

(Names of districts)

districts embracing the following townships _____

(Designate townships, by number and range)

shall be consolidated into one soil conservation district.

The ballot must be in the following form:

Shall _____ soil conservation districts embracing the
(Names of districts)

following townships _____ be

(Designate townships, by number and range)

consolidated into one soil conservation district?

Yes _____

No _____

The board of supervisors of the district shall appoint the board of election for each polling place. The board of election must consist of one inspector, one judge, and one clerk. Members of the election board are entitled to receive five dollars for their services.

4.1-20-46. Conduct of election - Canvass of votes.

An election upon the question of consolidating two or more soil conservation districts must be conducted in accordance with the laws of the state prescribing the conduct of general elections. After the polls are closed, the board of election shall canvass the votes and the clerk of the board shall certify to the board of supervisors of the clerk's district and to the committee the result of the election.

The committee shall publish the result of the election. If a majority of the ballots cast on the question in each district are for consolidation, the committee shall file with the secretary of state a statement certifying that the consolidated district has been duly and regularly established.

4.1-20-47. Supervisors of consolidated district - Terms of office - Powers and duties.

The members of the board of supervisors of a newly consolidated district are the supervisors from each of the districts that have been consolidated whose existing terms of office would last expire if the new consolidated district were not established. Those members shall determine by lot the order in which their terms of office in the consolidated district will expire. If more than three districts are consolidated, the members of the board of supervisors of the consolidated district must be determined by lot among the supervisors from the districts whose existing terms would expire last. If only two districts are consolidated, the third member of the board of supervisors of the consolidated district must be determined by lot among the remaining supervisors from both such districts. The supervisors thus selected shall hold office until the next general election of the district and until their successors are elected and qualified. Supervisors of a consolidated district have all the powers and duties of supervisors of a soil conservation district as enumerated in this chapter. The name of a consolidated district must be determined by the new supervisors of the consolidated district.

4.1-20-48. Costs and expenses of consolidation - Disposition of property - Contracts of districts after consolidation.

All costs and expenses incidental to the consolidation of two or more districts must be borne equally by each of the consolidated districts. All property and money of the districts that have been consolidated become the property of the newly established district. All contracts to which the supervisors of each of the districts

consolidated are parties remain in force and effect for the period provided in the contracts and the supervisors of the consolidated district are substituted as parties in the contracts. Supervisors of a consolidated district are entitled to all the benefits and subject to all the liabilities under the contracts and have the same rights as the supervisors of the district that entered the contract would have had if a consolidated district had not been established.

4.1-20-49. Soil conservation trust lands.

The state of North Dakota holds in trust for use by the soil conservation districts of the state for the soil conservation program the property in Burleigh County described as follows:

Township one hundred thirty-eight north, range eighty west, fifth principal meridian: west one-half of section fifteen and that portion of the southeast quarter of section sixteen described as follows: beginning at the southeast corner of said section sixteen, thence running north on the east line of said section six hundred sixty feet [201.17 meters]; thence west parallel with the south line of said section two thousand three hundred ten feet [704.09 meters]; thence south six hundred sixty feet [201.17 meters] to a point on the south line of said section two thousand three hundred ten feet [704.09 meters] west of the southeast corner of said section; thence east along the south line of said section two thousand three hundred ten feet [704.09 meters] to the place of beginning; containing thirty-five acres [14.16 hectares], more or less.

Subject, however, to the following rights, easements, exceptions, and reservations:

1. Easements for existing or established roads, highways, and public utilities, if any.
2. Right reserved by the Department of the Army "to enter thereon and remove gravel and use the established rubbish disposal area as long as any part of Fort Lincoln Military Reservation is used by the Department of the Army".
3. Reservation to the United States of America and its assigns of an undivided three-fourths interest in all coal, oil, gas, and other minerals, including three-fourths of all sand, gravel, stone, clay and similar materials, in or under the property, together with the usual mining rights, powers, and privileges, including the right at any and all times, to enter upon the land and use those parts of the surface as may be necessary in prospecting for, mining, saving and removing the minerals or materials, provided the quantities of sand, gravel, stone, clay and similar materials, as may be required, may be utilized in the operation or improvement of the lands.

The lands, having been conveyed to the state of North Dakota by the United States of America for use in carrying out the soil conservation program of the soil conservation districts of the state, are further subject to the condition the land must be used for public purposes and if at any time cease to be so used must revert to and become revested in the United States. Upon approval by the United States of America in accordance with the original grant of the trust lands, the trust lands may be leased, sold, conveyed, traded for, or replaced by other land suitable for the benefit of the soil conservation program in this state. No lease, sale, conveyance, trade, or replacement of the trust lands may be made under conditions that will cause or may cause the reversion of the lands back to the United States of America.

The control, custody, possession, supervision, management, operation, and transfer of the trust lands and any replacement lands is hereby vested in the North Dakota association of soil conservation districts for use in carrying out the soil conservation program of the soil conservation districts of the state and the association in such control, custody, possession, supervision, management, operation, and transfer shall hold all accumulations of personal property or surplus funds derived from said lands in trust for the soil conservation districts of the state for use in carrying out the soil conservation program. Any transfer, sale, trade, or replacement of trust lands is excepted from section 38-09-01, and the North Dakota association of soil conservation districts may transfer all or a portion of the minerals held by the state or the association which are located under the trust lands. Any funds generated through bonuses, leases, royalties, or otherwise generated by minerals reserved by the association or funds generated from the sale of minerals must be held in trust as provided in this section.

SECTION 3. Chapter 4.1-21 of the North Dakota Century Code is created and enacted as follows:

4.1-21-01. State forester - Appointment - Qualifications - Duties.

The board of higher education shall appoint the state forester.

1. The state forester must be a graduate of an accredited school of forestry with a minimum education of a bachelor of science degree in forestry. The office of the state forester must be located in Bottineau. The state forester shall serve as the director of the state forest service and, subject to the approval of the board of higher education and the president of North Dakota state university, may employ assistants and secure office facilities and equipment necessary for the administration of this chapter and the performance of the powers and duties of the office.
2. The state forester shall:
 - a. Supervise the raising and distribution of seeds and forest tree planting stock as provided in this chapter.
 - b. Promote practical forestry and compile and disseminate information relative to practical forestry to landowners, community groups, schools, and other organizations interested in forestry.
 - c. Encourage the development, use, and wise stewardship of forest resources.
 - d. Provide assistance to landowners, producers, and public bodies relating to forestry, reforestation, protection of forest resources, prevention and suppression of fires, planting of trees and shrubs, and the growing, harvesting, marketing, and management of forest resources.

4.1-21-02. State nursery - Maintenance - Purpose.

A state nursery, under the direction of the state forester, must be maintained at Towner. The nursery shall propagate seeds and forest tree planting stock adapted to the climatic conditions of this state.

4.1-21-03. Powers - Cooperative state agreements.

Under the general supervision of the board of higher education, the state forester may:

1. Establish procedures for the administration of this chapter.
2. Provide grants to, and enter cooperative agreements with, public and private entities for purposes consistent with this chapter.
3. Establish councils to advise the state forester on the administration of this chapter.

4.1-21-04. State forester reserve account.

The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds one million dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than seven hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

4.1-21-05. Distribution of seeds and planting stock.

Seeds and planting stock from the state nursery may be distributed by the state forester to citizens and landowners of this state upon payment by them of a price not greater than one hundred ten percent of the cost to the state of production in the case of planting stock or collection in the case of seeds, and the cost of transportation from the nursery. The seeds and planting stock may be used to establish or reestablish forests, windbreaks, shelterbelts, living snow fences, farm woodlots, Christmas tree plantings, wildlife habitats, and other conservation tree plantings and for erosion control and water quality management.

4.1-21-06. State forester may accept land for forestry purposes.

The state forester may accept gifts, donations, or contributions of land suitable for forestry purposes and may enter agreements for acquiring, by lease, purchase, or otherwise, such lands as in the state forester's judgment are desirable for state forestry purposes.

4.1-21-07. Obligations incurred in acquiring land - Payment.

Obligations incurred by the state forester in the acquisition of land under this chapter must be paid solely and exclusively from revenues derived from that land, and may not impose any liability upon the general credit and taxing power of the state.

4.1-21-08. Powers of state forester when lands acquired or leased.

When lands are acquired or leased under section 4.1-21-06, the state forester may make expenditures from any funds not otherwise obligated for the management, development, and utilization of those areas. The state forester may provide recreational services within those areas and may charge a user fee in an amount

sufficient to cover the cost of providing those services. The state forester may sell or otherwise may dispose of products from those lands and may make necessary rules to carry out the purposes of this chapter.

4.1-21-09. Revenue received from lands acquired or leased - Regulations governing - Payments in lieu of taxes.

All revenues derived from lands acquired or leased under this chapter must be segregated by the state treasurer for the use of the state forester in the acquisition, management, development, and use of such lands. However, from those revenues derived from agricultural leases there must be paid over to the governing body of the county in which those lands are located, an amount sufficient to cover the loss of tax revenues, if any, resulting from such acquisition or lease.

4.1-21-10. State forester may sell, exchange, or lease lands.

The state forester may sell, exchange, or lease lands under the state forester's jurisdiction when in the state forester's judgment it is advantageous to the best orderly development and management of state forests and state parks, except any sale, lease, or exchange may not be contrary to the terms of any contract that the state has entered.

4.1-21-11. Agreements for shelterbelt lands by state.

Any board or officer having the control or management of any real estate belonging to or controlled by this state or any of its political subdivisions may enter agreements with the officers and agents of the United States for the improvement by the United States of any of those lands by the establishment and maintenance on those lands of shelterbelts composed of trees, other plants, and necessary protective structures and works. Every agreement must describe particularly the land to be covered by the shelterbelt, must be recorded at the expense of the United States in the county where the land is situated, and thereafter all leases, sales, and other disposition of such land are subject to the agreement.

4.1-21-12. Trees for North Dakota program and trust fund.

The trees for North Dakota program is created for the public purpose of strengthening the tradition of tree planting and management in this state.

A special fund known as the trees for North Dakota program trust fund is established in the state treasury. Income earned on moneys in the fund must be credited to the fund. The state forester shall deposit all program funds received from governmental and private sources in the trust fund. Program funds may be expended for direct costs or distributed for grants and contracts by the state forester within the limits of legislative appropriations for defraying the costs associated with execution of the trees for North Dakota program.

Any political subdivision of the state may provide financial aid or supportive services to the trees for North Dakota program.

SECTION 4. Chapter 4.1-22 of the North Dakota Century Code is created and enacted as follows:

4.1-22-01. Definitions.

In this chapter, except as otherwise provided:

1. "Certificate of inspection" means a document issued or authorized by the commissioner stating nursery stock is practically free from damaging pests.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Grower" means any person that takes a reproductive part of nursery stock and increases the size and development of the stock for at least one full growing season. A grower includes a person producing nursery stock from tissue culture.
4. "Infested" means infected with a quantity of pests or so exposed to a quantity of pests that it would be reasonable to believe potential for harm or threat to the health of the host nursery stock exists.
5. "Nonhardy" means plant species, varieties, and cultivars that will not survive climatic conditions in North Dakota.
6. "Nursery" means any place where nursery stock is propagated, grown, or offered for sale.
7. "Nursery stock" means all trees, shrubs, woody vines and their parts that are capable of propagation or growth, except seed. Only plants intended for outdoor planting are considered nursery stock.
8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or other similar organism that can cause damage to nursery stock.
9. "Place of business" means each separate location from which nursery stock is being offered for sale.
10. "Viable nursery stock" means nursery stock that is capable of living and accomplishing the purpose for which it is grown, whether for foliage, flowers, fruit, or special use.

4.1-22-02. Administration - Rulemaking authority.

The commissioner shall administer this chapter. The commissioner may adopt rules under chapter 28-32 to implement this chapter.

4.1-22-03. Authority for inspection.

The commissioner shall inspect all nursery stock being grown in North Dakota at least once each year and may enter and inspect any nursery or place of business during normal business hours.

4.1-22-04. Authority for abatement - Removal from sale.

After giving notice to the owner or the owner's agent, the commissioner may destroy, treat, or remove from sale, at the owner's expense, any nursery stock offered for sale found to be not viable, not accompanied by a certificate of inspection, not labeled correctly, or infested with a pest.

4.1-22-05. Certification of nursery stock.

The commissioner shall issue a certificate of inspection annually for nursery stock grown in licensed nurseries within the state found to be practically free from

damaging pests. Certificates expire on December thirty-first each year unless canceled at an earlier date. Certification may be withheld by the commissioner when nursery stock is infested with a pest or if weeds or other objects prevent an adequate inspection of the nursery stock. All nursery stock being offered for sale within the state must be from officially inspected sources. A copy of a certificate of inspection from the state of origin must accompany each commercial lot or shipment of nursery stock that is transported into or offered for sale within North Dakota. All copies of the North Dakota certificate of inspection required for shipping purposes must be approved by the commissioner.

4.1-22-06. Nursery license - Fee.

A person may not sell nursery stock without a license issued by the commissioner. Licenses expire on December thirty-first each year unless revoked at an earlier date. An application for renewal of license with any additional information required by the commissioner must be submitted and accompanied by a fee of fifty dollars on or before December thirty-first each year. A separate license is required for each place of business. A fee of ten dollars must be submitted for each additional license, other than the principal place of business. A license may not be issued to a grower unless the grower has first been issued a certificate of inspection.

4.1-22-07. Labeling and standards for nursery stock.

A person may not sell or offer for sale any nursery stock not labeled in accordance with the international code of nomenclature for cultivated plants with the complete correct botanical or approved recognized common name. All nonhardy trees and shrubs, as determined by the commissioner, must be labeled "nonhardy in North Dakota". All nursery stock offered for sale or distribution must be in a viable condition and must be stored and displayed under conditions that will maintain its viability. Materials used to coat the aerial parts of the plant which change the appearance of the plant surface to prevent adequate inspection are prohibited.

4.1-22-08. Misrepresentation.

A person may not misrepresent the name, age, origin, grade, variety, quality, or hardiness of any nursery stock being offered for sale.

4.1-22-09. Reciprocal agreements.

The commissioner may enter reciprocal agreements with officers of other states for the recognition of official licenses and inspection certificates.

4.1-22-10. Exemptions.

The commissioner may exempt certain nursery stock, nurseries, or persons from all or part of the provisions of this chapter. Exemptions from licenses and fees may include:

1. Persons growing and propagating nursery stock for research or experimental purposes;
2. Soil conservation districts selling nursery stock for the prevention of soil and wind erosion or other conservation plantings; and
3. Persons growing nursery stock for noncommercial purposes or that the commissioner designates as exempt.

4.1-22-11. Penalties - Criminal - Civil - License revocation or nonrenewal.

1. It is a class B misdemeanor for any person to violate this chapter, or any rules adopted under this chapter.
2. Any person who violates any provision of this chapter, or rule adopted under this chapter, is subject to a civil penalty not to exceed five hundred dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.
3. The department may maintain, in accordance with the laws of this state, an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.
4. The commissioner may refuse to grant a license to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.

SECTION 5. Chapter 4.1-48 of the North Dakota Century Code is created and enacted as follows:

4.1-48-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Buyer" means an individual, group of individuals, organization, or entity that in the ordinary course of business buys potatoes or byproducts of potatoes grown in this state or that contracts with a potato producer to grow potatoes in this state.
2. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
3. "Potatoes" means potatoes or byproducts of potatoes produced for use in or as food, seed, feed, or other byproducts of the farm for the same or similar use.
4. "Producer" means an individual, group of individuals, organization, or entity that produces or causes to be produced potatoes by contracting with a buyer or processor to provide management, labor, machinery, facilities, or any production input for the production of potatoes.

4.1-48-02. Unfair acts and practices prohibited.

The following prohibited acts or practices, when engaged in by a buyer in connection with a potato production contract or purchase involving potatoes constitute unfair acts or practices for purposes of this chapter. A buyer may not:

1. Use coercion, intimidation, the threat of retaliation or the threat of contract termination, cancellation, or nonrenewal to impose, demand, compel, or dictate terms, payment or manner of payment, or the signing of a contract by a potato producer.

2. Use coercion, intimidation, the threat of retaliation, or the threat of contract termination, cancellation, or nonrenewal to require a producer to make capital improvements such as buildings or equipment.
3. Interfere with, restrain, or coerce a producer in the exercise of the right to join, form, or assist a producer bargaining cooperative or association.
4. Refuse to deal with a producer because of the exercise of the right to join and belong to a producer bargaining cooperative or association.
5. Refuse to provide to the producer, upon request, the statistical information and the data used to determine compensation paid to the producer for settlement.
6. Refuse to allow a producer or the producer's designated representative to observe, by actual observation at the time of weighing, the weights and measures used to determine the producer's compensation at settlement.
7. Use the performance of any other producer to determine the settlement of a producer.
8. Refuse to bargain with an established producer bargaining cooperative or association formed for the purpose of negotiating contracts and agreements.

4.1-48-03. Civil liability for damages from an unfair act or practice.

A person who engages in conduct that constitutes an unfair act or practice under section 4.1-48-02 is liable to a producer for all damages caused to the producer by the unfair act or practice.

4.1-48-04. Good faith - Damages for violation - Penalty.

There is an implied promise of good faith by all parties to a potato production contract. In an action to recover damages, if the court or a jury finds there has been a breach of the implied promise of good faith, in addition to other damages authorized by law, attorney's fees and court costs may be awarded.

4.1-48-05. Recapture of capital investment required by a potato production contract.

1. A contractor may not terminate or cancel a contract that requires a producer to make a capital investment in buildings or equipment that cost one hundred thousand dollars or more and have a useful life of five or more years until:
 - a. The producer has been given written notice of the intention to terminate or cancel the contract at least one hundred eighty days before the effective date of the termination or cancellation, or as provided in subsection 3; and
 - b. The producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.
2. Except as provided in subsection 3, if a producer fails to comply with the provisions of a contract that requires a capital investment subject to subsection 1, a contractor may not terminate or cancel that contract until:

- a. The contractor has given written notice with all the reasons for the termination or cancellation at least ninety days before termination or cancellation, or as provided in subsection 3; and
 - b. The recipient of the notice fails to correct the reasons stated for termination or cancellation in the notice within sixty days of receipt of the notice.
3. The one hundred eighty-day notice period under subsection 1, and the ninety-day notice period and the sixty-day notice period under subsection 2, are waived and the contract may be canceled or terminated immediately if the alleged grounds for termination or cancellation are:
 - a. Voluntary abandonment of the contract relationship by the producer; or
 - b. Conviction of the producer of an offense directly related to the business conducted under the contract.

SECTION 6. AMENDMENT. Section 57-38-34.6 of the North Dakota Century Code is amended and reenacted as follows:

57-38-34.6. Optional contributions to trees for North Dakota program trust fund.

An individual may designate on the tax return of that individual a contribution to the trees for North Dakota program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the individual. The tax commissioner shall notify taxpayers of this optional contribution on the individual state income tax returns. The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the trees for North Dakota program trust fund for use as provided in chapter 4-21-24.1-21.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 66

HOUSE BILL NO. 1240

(Representatives Monson, D. Johnson, Pollert)
(Senators Campbell, Luick, Myrdal)

AN ACT to amend and reenact section 4-41-02 of the North Dakota Century Code, relating to industrial hemp; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any person desiring to grow or process industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner.
 - a. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp.
 - b. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant.
 - c. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure.
 - d. Any person with a prior criminal conviction may be denied licensure.
 - e. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year.
 - f. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes or research.
 - g. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency.

- h. This subsection does not apply to any person licensed by the United States drug enforcement agency to conduct research.
 - i. An application for a license under this subsection may be filed with the commissioner at any time.
2. a. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp.
 - b. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, and the names of the persons to whom the hemp was sold or distributed.
3. ~~The commissioner shall adopt rules to provide for oversight of the industrial hemp during growth, harvest, and processing and to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for supervision of the industrial hemp during its growing, harvesting, and processing.~~
 4. ~~To provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the~~ The commissioner shall assess each applicant a fee of ~~five~~ one hundred fifty dollars plus twenty-five dollars per acre. ~~The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the commissioner's operating fund and are appropriated to the commissioner to be used to enforce this chapter.~~
 5. Fees collected under this chapter must be deposited in the commissioner's operating fund and are appropriated to the department on a continuing basis for the purpose of enforcing this chapter.

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

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 67

SENATE BILL NO. 2027

(Legislative Management)
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-23, 4.1-33, 4.1-34, 4.1-35, 4.1-36, 4.1-37, 4.1-38, 4.1-39, and 4.1-40 of the North Dakota Century Code, relating to revisions of agriculture laws regarding plant pests, pesticides, chemigation regulation, pesticide container disposal, anhydrous ammonia facilities, anhydrous ammonia risk management, crop protection products, and the fertilizer and soil conditioner law; to amend and reenact subsection 19 of section 19-02.1-01 and sections 23-01-01.1 and 23-01-25 of the North Dakota Century Code, relating to the definition of a pesticide chemical and the state department of health; to repeal chapters 19-18, 19-20.1, 19-20.2, and 19-20.3 of the North Dakota Century Code, relating to pesticides, fertilizers and soil conditioners, anhydrous ammonia facilities, and anhydrous ammonia risk management; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-23 of the North Dakota Century Code is created and enacted as follows:

4.1-23-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means a document issued or authorized by the commissioner indicating a regulated article is not contaminated with a pest.
2. "Commissioner" means the agriculture commissioner or the commissioner's authorized representative.
3. "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.
4. "Infested" means infected with a quantity of pests or so exposed to a quantity of pests that it would be reasonable to believe that potential for harm or threat to the health of the host exists.
5. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, or allow to be transported.
6. "Permit" means a document issued or authorized by the commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.
7. "Person" means any individual, corporation, limited liability company, company, society, or association, or other business entity.

8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism that can cause damage to a plant or part of a plant or any processed, manufactured, or other product of plants.
9. "Phytosanitary certificate" means an international document issued or authorized by the commissioner stating that a plant or plant product is considered free from quarantine pests and practically free from injurious pests and that the plant or plant product is considered to conform with the current phytosanitary regulations of the importing country.
10. "Plant" means any part of a plant, tree, aquatic plant, plant product, plant material, shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corn, pip, cutting, scion, bud, graft, fruit pit, or agricultural commodity.
11. "Regulated article" means any article of any character as described in a quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.

4.1-23-02. Administration - Rulemaking authority.

The commissioner shall administer this chapter. The commissioner shall employ an individual who has a baccalaureate degree in entomology, plant pathology, or biological sciences. The commissioner may adopt rules to carry out this chapter.

4.1-23-03. Authority for control measures.

The commissioner, either independently or in cooperation with political subdivisions, farmers' associations or similar organizations, individuals, federal agencies, or agencies of other states, is authorized to carry out operations or measures to locate, suppress, control, eradicate, prevent, or retard the spread of pests with the consent of the owners of the property involved.

4.1-23-04. Authority for plant quarantine.

1. The commissioner is authorized to quarantine this state or any portion of the state if the commissioner determines that quarantine is necessary to prevent or retard the spread of a pest within or from this state, and to quarantine any other state or portion of another state if the commissioner determines a pest exists in another state and a quarantine is necessary to prevent or retard the spread of the pest into this state. Before determining that a quarantine is necessary, the commissioner, after due notice to interested parties, shall hold a public hearing under rules adopted by the commissioner.
2. Any interested party may appear and be heard either in person or by attorney at the public hearing, provided, the commissioner may impose a temporary quarantine for a period not to exceed ninety days during which time a public hearing, as provided for in this section, must be held if it appears the quarantine may require more than the ninety-day period to prevent or retard the spread of the pest. The commissioner shall give notice of the quarantine in those newspapers in the quarantined area selected by the commissioner. The commissioner may limit the application of the quarantine to the infested portion of the quarantined area and appropriate environs, to be known as the regulated area, and, without further hearing, may extend the regulated area to include additional portions of the quarantined area:

- a. Upon publication of a notice in newspapers in the quarantined area selected by the commissioner; or
 - b. By direct written notice to those concerned.
3. Following establishment of the quarantine, a person may not move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into, or through this state contrary to rules adopted by the commissioner. Notice of the rules must be published in newspapers in the quarantined area selected by the commissioner.
 4. The rules may restrict the movement of the pest and any regulated articles from the quarantined or regulated area in this state into or through other parts of this state or other states and from the quarantined or regulated area in other states into or through this state. The rules may impose inspections, disinfections, certifications, permits, and other requirements as the commissioner deems necessary to effectuate the purposes of this chapter.

4.1-23-05. Authority for abatement and emergency measures.

If the commissioner finds any article that is infested or reasonably believed to be infested or a host or pest exists on any premise or is in transit in this state, the commissioner, upon giving notice to the owner or the owner's agent in possession of the host or pest, may seize, quarantine, treat, or otherwise dispose of such pest, host, or article in the manner as the commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the spread of the pest. The commissioner may order the owner or agent to treat or dispose of the pest, host, or article. If large areas or metropolitan areas, involving many people, are to be treated, notice may be given through newspaper, radio, or other news media. A notice must prominently appear, at least ten days prior to treatment, in at least three issues of a daily paper having local coverage.

4.1-23-06. Authority for inspections - Warrants.

1. The commissioner, with a warrant or the consent of the owner, may make reasonable inspection of any premises in this state and any property in or on the premises. The commissioner, without a warrant with the assistance of any law enforcement agency may stop and inspect, in a reasonable manner, any means of transportation moving in this state upon probable cause to believe it contains or carries any pest, host, or other article subject to this chapter. The commissioner may make any other reasonable inspection of any premises or means of transportation for which no warrant is required under the Constitution of the United States and the Constitution of North Dakota.
2. District courts in this state may issue warrants for inspections of property or transportation upon a showing by the commissioner of probable cause to believe there exists in or on the property or transportation to be inspected a pest, host, or other article subject to this chapter.

4.1-23-07. Cooperation.

1. The commissioner is authorized to cooperate with any agency of the federal government in operations and measures the commissioner deems necessary to suppress, control, eradicate, prevent, or retard the spread of any plant pest including the right to expend state funds on federal lands.

2. The commissioner is authorized to cooperate with agencies of adjacent states in such operations and measures the commissioner deems necessary to locate; to suppress, control, eradicate, prevent, or retard the spread of any pest, provided, that the use of funds appropriated to carry out this chapter, for operations in adjacent states, must be approved in advance by the governor or the governor's designee.

4.1-23-08. Penalties.

1. It is a class A misdemeanor for:
 - a. Any person to violate any provision of this chapter or use without authority any certificate or permit or other document provided for in this chapter or in the rules of the commissioner provided for in this chapter; or
 - b. Any person to knowingly move any regulated article into this state from any quarantined area of any other state, when the article has not been treated or handled under provisions of the quarantine and rules at the point of origin.
2. In addition to criminal sanctions, a person found guilty of violating this chapter or rules is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32. The commissioner may maintain an appropriate civil action in the name of the state against any person violating this chapter.

4.1-23-09. Authority for compensation.

The commissioner may authorize the payment of reasonable compensation to growers in infested areas for not planting host crops pursuant to instructions issued by the commissioner prior to the planting season, for losses resulting from the destruction of any regulated articles. A payment may not be authorized for the destruction of regulated articles moved in violation of any rule or any host planted contrary to instructions issued by the commissioner. Any compensation payment program authorized by the commissioner must be approved by the legislative assembly.

4.1-23-10. Authority for local pest control and regulations.

The governing body of any political subdivision, by ordinance or resolution, may adopt and enforce regulations to control and prevent the spread of pests. If state rules are in effect, any similar local regulations must be approved by the commissioner. State rules must be in effect if the commissioner finds that adequate measures are not being taken by the political subdivision. The commissioner shall notify the appropriate officials of the political subdivision before any action is taken by the commissioner. The rules may authorize appropriate officers and employees to enter and inspect any public or private place which might harbor pests.

4.1-23-11. Authority for financing local control programs - County pest coordinator.

1. The board of county commissioners may appropriate money for the control of pests under this chapter. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The board of county commissioners shall determine the portion, if any, of control

program costs to be paid by the county. Costs of the control program may be paid from revenues derived from general fund levy authority of the county or from the county noxious weed control levy authority under section 4.1-47-14.

2. The board of county commissioners for any county shall designate an individual to serve as county pest coordinator. The county pest coordinator shall administer local and private funds in cooperation with state and federal pest control programs. When state funds are involved, the county pest coordinator shall submit county and township control plans to the agriculture commissioner for approval.

4.1-23-12. Authority for domestic and export certification.

The commissioner may inspect and certify any plant and plant product, when offered for export or shipment from within the state and to certify, to shippers and interested parties as to the freedom of the products from injurious pests according to the phytosanitary requirements of other states and foreign countries. Authority for inspection and certification under this section is not limited to plants defined in section 4.1-23-01. The commissioner may make reasonable charges and use any means necessary to accomplish this objective. A portion of the fees collected may be deposited in the commissioner's operating fund equivalent to the amount that the United States department of agriculture assesses the department for federal plant export certificates issued by the commissioner. A certificate may be withheld or not issued if the product does not meet phytosanitary or import requirements and if all state licensing and bonding requirements have not been met. Consignee names and addresses on phytosanitary certificates are confidential.

SECTION 2. Chapter 4.1-33 of the North Dakota Century Code is created and enacted as follows:

4.1-33-01. Definitions.

As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Applicator" means any person who applies a pesticide to land.
3. "Certified applicator" means any individual who is certified under this chapter to purchase or use a restricted use pesticide.
4. "Commercial applicator" means a person who, by contract or for hire, engages in the business of applying pesticides for compensation.
5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
7. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not

- including equipment used for the application of pesticides when sold separately from pesticide.
8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
 9. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships that exist among them.
 10. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, inhabiting, or stored on or in that land. The term does not include any pressurized hand-held household apparatus used to apply any pesticide, or any equipment or contrivance of which the individual who is applying the pesticide is the source of power or energy to make the pesticide application.
 11. "Fungus" means any non-chlorophyll-bearing thallophytes, that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
 12. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
 13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
 14. "Labeling" means the label and all other written, printed, or graphic matter:
 - a. Accompanying the pesticide or device; or
 - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board, the United States environmental protection agency, the United States departments of agriculture and interior, the United States department of health and human services, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
 15. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant to or situated on land, fixed or mobile, including any used for transportation.
 16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.

17. "Pest" means any insect, rodent, nematode, fungus, or weed; or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals.
18. "Pesticide" means:
 - a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
19. "Pesticide dealer" means any person, other than a pesticide wholesaler, distributing pesticides.
20. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
21. "Private applicator" means an individual who is required to be a certified applicator to buy or use a restricted use pesticide on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
22. "Public applicator" means an applicator who applies pesticides, other than ready-to-use pesticides, as an employee of:
 - a. A governmental agency, municipal corporation, or public utility; or
 - b. A hospital, privately owned golf course, nursery, or greenhouse.
23. "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which is applied directly from its original container consistent with label directions, and includes aerosol spray cans, ready-to-use spray containers, bait packs, and other types of containers that do not require mixing or loading before application.
24. "Restricted use pesticide" means any pesticide formulation that is classified as restricted use by the United States environmental protection agency or the agriculture commissioner under section 4.1-34-06.
25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
26. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.

27. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
28. "Weed" means any plant that grows where not wanted.
29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

4.1-33-02. Pesticide control board - Enforcement by agriculture commissioner.

1. The pesticide control board consists of the agriculture commissioner, the director of the cooperative extension division of the North Dakota state university of agriculture and applied science, and the director of the agricultural experiment station at North Dakota state university of agriculture and applied science. The agriculture commissioner is chairman of the board. The board shall meet at the call of the chairman.
2. The agriculture commissioner is responsible for the enforcement of this chapter. Any authority of the commissioner under this chapter may be executed by such employees or agents designated by the commissioner.
3. The members of the board must be compensated for their expenses in performing their duties under this chapter at the same rate as other state officials and the board's expenses must be paid from funds provided to the agriculture commissioner for the administration of this chapter. The board may act through the office of the agriculture commissioner and the commissioner's staff shall provide staff services for the board as directed by the commissioner.

4.1-33-03. Pesticide control board to administer chapter and adopt rules.

1. a. The pesticide control board shall administer this chapter and may adopt rules under chapter 28-32 to implement this chapter. The rules may prescribe methods to be used in the application of pesticides. The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
 - (1) Plants, including forage plants, on adjacent or nearby lands.
 - (2) Wildlife in the adjoining or nearby areas.
 - (3) Fish and other aquatic life in waters in proximity to the area to be treated.
 - (4) Persons, animals, or beneficial insects.
- b. In adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.

2. In adopting rules under this chapter, the board shall prescribe standards and requirements for the certification of applicators of pesticides. These standards and requirements must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the United States environmental protection agency.
3. Rules adopted under this chapter may not permit any pesticide use that is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or regulations or orders issued thereunder.
4. To comply with the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the board may make reports to the United States environmental protection agency in the form and containing the information as that agency requires.
5. Rules to implement this chapter may provide for:
 - a. The collection, examination, and reporting of samples of pesticides.
 - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and pesticides containers.
 - c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

4.1-33-04. Limitation on authority of political subdivisions regarding pesticides.

A political subdivision, including a home rule city or county, may not adopt or continue in effect any ordinance, resolution, or home rule charter provision regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

4.1-33-05. Application to governmental entities and public utilities.

All governmental agencies and public utilities are subject to this chapter and rules adopted under this chapter.

4.1-33-06. Classification of commercial certificates.

The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements. A person may be required to pay an additional fee if the person desires to be certified in one or more of the classifications provided for by the board under this section.

4.1-33-07. Commercial and public applicator's certification.

1. A commercial or public applicator may not purchase, use, or supervise the use of a pesticide without first complying with the certification standards and

requirements of this chapter, or other restrictions as may be determined by the board.

2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds, after examination as the board requires, the applicant qualified to apply pesticides in the classifications for which the applicant has applied and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial or a public applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification.

4.1-33-08. Expiration of certification - Renewal.

A certificate issued under section 4.1-33-07 expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board shall require a person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to classifications for which the applicant has applied makes a new examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to safely and properly use pesticides.

4.1-33-09. Nonresident application - Designation of agent for service of process.

1. A nonresident applying for certification as an applicator or dealer under this chapter shall file a written power of attorney in a form as to render effective the jurisdiction of the courts of this state over the nonresident applicant designating either:
 - a. North Dakota state university extension service or its designee as the nonresident's agent upon whom service of process may be had in the event of any suit against that nonresident person; or
 - b. The duly appointed nonresident person's resident agent upon whom process may be served as provided by law.
2. The extension service is allowed such fees for service as a registered agent as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the extension service or of a resident agent. The copy must be duly certified by the extension service.

4.1-33-10. Proof of financial responsibility - Exceptions.

1. A commercial applicator certificate may not be issued unless the applicant furnishes proof of financial responsibility. Financial responsibility must be maintained in the amount of one hundred thousand dollars. Financial responsibility may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. When requested by the agriculture commissioner, a commercial applicator immediately shall furnish proof of compliance with this section. If the applicator is unable to furnish the required proof, the commissioner may stop a pesticide application and not allow resumption until the applicator furnishes proof of compliance. The agriculture commissioner shall immediately suspend the certification of a commercial applicator who fails to maintain the financial responsibility standards of this section. If there is any recovery against the commercial applicator, the applicator shall demonstrate continued compliance with the requirements of this section. An application for reinstatement of a certificate suspended under this section must be accompanied by proof that any judgment previously rendered against the applicant has been satisfied.
2. This section does not apply to:
 - a. A rancher who must obtain a commercial applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member must obtain a commercial applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - c. A person who must be certified in the right-of-way category.
 - d. A commercial applicator who controls noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.
 - e. An employee of a commercial applicator if the commercial applicator complies with this section.

4.1-33-11. Pesticide dealer certification - Employees - Requirements for purchase.

1. A pesticide dealer may not distribute restricted use pesticides or act as a restricted use pesticide dealer, without first having obtained certification from the North Dakota state university extension service, or the service's designee. During hours the business is open, a certified person must be at any location or outlet from which restricted use pesticides are distributed. Any manufacturer or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.

2. Application for a certificate must be on a form prescribed by the board accompanied by an examination fee set by the board. The application must include the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.
3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements as prescribed by the board within each classification for which certification is sought.
4. Each pesticide dealer is responsible for the acts of each individual employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's certification is subject to suspension or revocation, after a hearing, for any violation of this chapter committed by the dealer or by the dealer's officer, agent, or employee.
5. A certificate issued under this section expires on the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. The board may condition renewal of a certificate upon completion of a seminar approved by the board or successful completion of an examination required by the board, or both. The board may require any person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to pesticides makes an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to safely and properly distribute pesticides.
6. Restricted use pesticides may be sold only to:
 - a. Persons certified as applicators by this state; and
 - b. Persons certified to use restricted use pesticides by another state, provided the pesticide control board determines the certifying state's requirements are substantially similar to those of this state and that the person does not use the restricted use pesticide in this state.

4.1-33-12. Private applicators - Certification.

1. a. An individual who would be a private applicator, if certified, may not buy any restricted use pesticide unless the individual first complies with the certification requirements established by the board.
- b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:
 - (1) Complies with the certification requirements established by the board;
or
 - (2) Is under the direct supervision of a certified applicator.

2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use must be determined by the board. In determining these standards, the board shall consider similar standards of the United States environmental protection agency. The North Dakota state university extension service, or its designee, shall issue a certificate to any private applicator who has qualified as prescribed by the board. The North Dakota state university extension service, or its designee, may require any applicant required to be certified under this section to pay a reasonable fee, not greater than the cost to the North Dakota state university extension service, for materials provided to the applicant for training and education.

4.1-33-13. Unlawful acts - Grounds for denial, suspension, or revocation of a certification.

It is a violation of this chapter for any person to:

1. Make false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertise a pesticide without reference to its classification.
2. Make a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Apply materials known by that person to be ineffective or improper.
4. Operate faulty or unsafe equipment.
5. Operate in a faulty, careless, or negligent manner.
6. Neglect or, after notice, refuse to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. Refuse or neglect to keep and maintain the records required by this chapter or to make reports when and as required.
8. Make false or fraudulent records, invoices, or reports.
9. Apply pesticide to the property of another, without the permission of the owner or lessee, unless the application is made under the direction of a governmental entity.
10. Use fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refuse or neglect to comply with any limitations or restrictions on or in a duly issued certification.
12. Aid or abet a person to evade this chapter, conspire with a person to evade this chapter, or allow the person's certification to be used by another person.
13. Knowingly make false statements during or after an inspection or an investigation.
14. Impersonate a federal, state, county, or city inspector or official.

15. Distribute any restricted use pesticide to any person who is not properly certified to use or purchase the pesticide.
16. Buy, use, or supervise the use of any pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted.
17. Apply any pesticide that is not registered under chapter 4.1-34.

4.1-33-14. Records - Retention - Submission to commissioner.

The board shall require pesticide dealers, commercial applicators, and public applicators to maintain records of sales and purchases of restricted use and special exemption pesticides. The board shall require commercial applicators and public applicators to maintain records of all applications of pesticides. The board may require restricted use pesticide application records of private applicators. The records must be kept for a period of three years from the date of the application, sale, or purchase of the pesticide. Upon request, all or any requested part of these records must be submitted to the commissioner.

4.1-33-15. Reciprocal agreement.

The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to buy, distribute, or use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under section 4.1-33-07, 4.1-33-11, or 4.1-33-12 if the applicant would have taken the appropriate examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications under this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

4.1-33-16. Certification exemptions.

1. The certification requirements of this chapter do not apply to an individual applying nonrestricted use pesticides under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is applied under the direct supervision of a commercial applicator if the pesticide is applied by an individual acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified. The certification requirements of this chapter do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide label requires that a certified applicator personally apply the particular pesticide. A pesticide is deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instruction and control of a private applicator who is available if and when needed, even though the private applicator is not physically present at the time and place that the pesticide is applied.
2. The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides or to a doctor of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as medication during the course of normal practice.

4.1-33-17. Discarding and storing of pesticides, pesticide containers, and rinsate.

A person may not discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or rinsate in such a manner as to endanger the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall adopt rules governing the discarding, storage, display, or disposal of any pesticide, rinsate, pesticide containers, or devices.

4.1-33-18. Pesticide application - Alleged property damage - Notification of applicator.

1. a. Before a person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of a pesticide, the person shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:
 - (1) Twenty-eight days from the date the person first knew or should have known of the alleged damage; or
 - (2) Before twenty percent of the crop or field allegedly damaged is harvested or destroyed.
- b. Subdivision a does not apply if the person seeking reimbursement for property damage was the applicator of the pesticide.
2. Upon notifying the applicator as required under subsection 1, the person seeking reimbursement for the alleged property damage shall permit the applicator and up to four representatives of the applicator to enter the person's property for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator.

4.1-33-19. Subpoenas.

In any hearing to enforce this chapter, the commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications, sales, and purchases in the state.

4.1-33-20. Penalties.

1. Any person other than a private applicator who knowingly violates this chapter is guilty of a class A misdemeanor.
2. Any private applicator who knowingly violates this chapter is guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
4. A person who violates this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the

agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.

5. After providing an opportunity for a hearing, the commissioner may deny, suspend, revoke, or modify the provision of any certification issued under this chapter, if the commissioner determines that the applicant for certification or the holder of a certificate has violated this chapter or any rules adopted under this chapter.

4.1-33-21. Enforcement.

1. The commissioner shall enforce the requirements of this chapter and any rules adopted under this chapter.
2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule adopted under this chapter, in the district court of the county in which the violation occurs or is about to occur.
3. If any person violates this chapter, the commissioner may issue an order requiring the person to cease and desist from the unlawful activity. If the violator fails to obey, the commissioner shall cause the appropriate criminal complaint to be filed.
4. The 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 sample lands actually or reported to be exposed to pesticides.
 - c. Inspect storage or disposal areas.
 - d. Inspect or investigate complaints of injury to humans or land.
 - e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes without compensation to the owner for values less than three dollars.
 - f. Observe the use and application of a pesticide.
 - g. Inspect any place where pesticides or devices are stored or held for distribution, sale, or use, and obtain samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for the pesticides.
5. a. At any reasonable time, the commissioner may access records pertaining to the pesticide application, sales, purchases, and repackaging by any person. The commissioner may copy or make copies of the records for the purpose of this chapter. These records are confidential. However, the commissioner may use these records in any way to enforce this chapter. Any record the commissioner uses as an exhibit in an enforcement action is no longer a confidential record.

- b. If an individual alleges exposure to pesticides and if the individual's medical provider requests that the commissioner reveal the name of the pesticide, the commissioner may reveal the name of the pesticide to the individual making the request, together with the registration number assigned by the United States environmental protection agency. The commissioner may require a request under this section be made in writing.
6. If access is refused or if the commissioner determines critical enforcement documentation may be lost, the commissioner may apply to any court for a search warrant authorizing access to land or records. Upon compliance with chapter 29-29.1, the court may issue the search warrant for the purposes requested.
7. The commissioner may suspend or revoke a certification issued under this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

4.1-33-22. Stop-sale orders.

If the commissioner has reason to believe on the basis of inspection or tests that any pesticide or device is in violation of any provision of this chapter, or if the registration of the pesticide has been canceled or suspended by the state or United States environmental protection agency, the commissioner may issue a written or printed "stop-sale, use, or removal" order to any person who owns, controls, or has custody of the pesticide or device. After receipt of the order, a person may not sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

4.1-33-23. Information and instruction.

In cooperation with private, local, state, or federal agencies, the board may publish information and conduct short courses of instruction in the areas of knowledge required by this chapter.

4.1-33-24. Cooperation by the board with other entities.

The board may cooperate, receive grants-in-aid, and enter cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, to:

1. Secure uniformity of regulations.
2. Enter cooperative agreements with and submit plans to the United States environmental protection agency for approval to issue experimental use permits under the authority of this chapter and the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].
3. Cooperate in the enforcement of the federal pesticide control laws and state laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs.
4. Enter contracts with other agencies, including federal agencies, for the purpose of training pesticide applicators, managers, dealers, and pesticide consultants.
5. Gain assistance in implementation of this chapter.

6. Regulate certified applicators.
7. Comply with other purposes prescribed by rules of the commissioner.

4.1-33-25. Disposition of funds - Certification and training fund.

All moneys received by the pesticide control board under this chapter must be deposited to the credit of the certification and training fund under the control of the board.

SECTION 3. Chapter 4.1-34 of the North Dakota Century Code is created and enacted as follows:

4.1-34-01. Definitions.

For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Active ingredient" means:
 - a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient that will prevent, destroy, repel, or mitigate pests.
 - b. In the case of a plant regulator, any ingredient that, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.
 - c. In the case of a defoliant, any ingredient that will cause the leaves or foliage to drop from a plant.
 - d. In the case of a desiccant, any ingredient that will artificially accelerate the drying of plant tissue.
2. "Adulterated" applies to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.
3. "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.
4. "Commissioner" means the agriculture commissioner and includes any employee or agent designated by the commissioner.
5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.
7. "Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating pests but does not include equipment used for the application of pesticides when sold separately therefrom, or rodent traps.

8. "Environment" means air, water, land, and all plants and man and other animals living therein and the interrelationships that exist among these.
9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].
10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in humans or other animals, and those on or in processed food, beverages, or pharmaceuticals.
11. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.
12. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
13. "Inert ingredient" means an ingredient that is not an active ingredient.
14. "Ingredient statement" means:
 - a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or
 - b. A statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of any inert ingredients in the pesticide, except subdivision a applies if the preparation is highly toxic to humans, determined as provided in section 4.1-34-06, and in addition to subsections 1 and 2 of section 4.1-34-06. If the pesticide contains arsenic in any form, a statement must contain the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.
15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.
16. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects that may be present in any environment.
17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or any of its containers or wrappers.
18. "Labeling" means all labels and other written, printed, or graphic matter:
 - a. Upon the pesticide or device or any of its containers or wrappers;
 - b. Accompanying the pesticide or device at any time; or

- c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of a state or federal agency, state agricultural experiment station, or state agricultural college.

19. "Misbranded" applies:

- a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative to the pesticide or device or to its ingredients which is false or misleading in any particular; and
- b. To any pesticide:
- (1) If the pesticide is an imitation of or is offered for sale under the name of another pesticide;
 - (2) If the pesticide's labeling bears any reference to registration under this chapter;
 - (3) If the labeling accompanying the pesticide does not contain directions for use which are necessary and, if complied with, adequate to protect health and the environment;
 - (4) If the label does not contain a warning or caution statement that may be necessary and, if complied with, adequate to protect health and the environment;
 - (5) If the label does not bear an ingredient statement on that part of the immediate container and, if there is an outside container or wrapper, if the outside container or wrapper does not have affixed a correct copy of the required labeling information from the immediate container or does not contain an opening through which the ingredient statement on the immediate container can be clearly read, of the retail package that is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:
 - (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase; and
 - (b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the commissioner;
 - (6) The labeling does not contain a statement of the use classification under which the product is registered if the product is a restricted use pesticide;
 - (7) There is no label information affixed to its container, and, if there is an outside container or wrapper of the retail package, there is no label information affixed to the outside container or wrapper and the outside container or wrapper does not contain an opening through which the label information on the immediate container can be clearly read. The label information must include:

- (a) The name and address of the producer, registrant, or person for whom produced;
 - (b) The name, brand, or trademark under which the pesticide is sold; and
 - (c) The net weight or measure of the content;
 - (8) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by this chapter:
 - (a) The skull and crossbones;
 - (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - (c) A statement of a first aid or other practical treatment in case of poisoning by the pesticide;
 - (9) If any word, statement, or other information required under this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to humans or vertebrate animals or vegetation, except weeds to which it is applied, or to the individual applying the pesticide; or
 - (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious to humans or vertebrate animals, or the vegetation to which it is applied. The physical or physiological effect on plants may not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.
20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate nematodes.
21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural plants.
22. "Person" means any individual, partnership, association, corporation, limited liability company, or organized group of persons whether incorporated or not.
23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms except viruses, bacteria, or other micro-organisms on or in living humans or animals.

24. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but does not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. The term "plant regulator" does not include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.
26. "Protect health and environment" means protection against any unreasonable adverse effects on the environment.
27. "Registrant" means the person registering any pesticide pursuant to this chapter.
28. "Restricted use pesticides" means any pesticide formulation that is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the commissioner under section 4.1-34-06.
29. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal that the commissioner declares to be a pest.
30. "Snails" or "slugs" includes all harmful agricultural mollusks.
31. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
32. "Weed" means any plant that grows where not wanted.

4.1-34-02. Prohibited acts.

1. A person may not distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:
 - a. Any pesticide that has not been registered under section 4.1-34-03, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration. The commissioner may allow a change in the labeling or formula of a pesticide to be made within a registration period without requiring reregistration of the product.
 - b. Any pesticide unless the pesticide is in:

- (1) The registrant's or the manufacturer's unbroken immediate container; or
 - (2) A container repackaged by a facility or person with a United States environmental protection agency issued establishment number, and there is affixed to such container, and to any outside container or wrapper of the retail package, a correct copy of the required labeling information from the immediate container or there is in the outside container or wrapper an opening through which the required labeling information on the immediate container can be clearly read.
- c. The pesticide commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless the pesticide has been distinctly colored or discolored as provided by rules issued in accordance with this chapter, or any other white powder pesticide that the commissioner, after investigation of and after public hearing on the necessity for the action for the protection of the public health and the feasibility of the coloration or discoloration, by rule, requires to be distinctly colored or discolored; unless it has been so colored or discolored. The commissioner may exempt any pesticide to the extent it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the commissioner determines the coloring or discoloring for the use is not necessary for the protection of the public health.
 - d. Any pesticide that is adulterated or misbranded, or any device that is misbranded.
2. A person may not detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter.
 3. A person may not use for the person's own advantage or reveal other than in response to a proper subpoena, except to a physician or other qualified person for use in the preparation of an antidote, any information relative to the formula of any product acquired by authority of this chapter.

4.1-34-03. Registration - Fees - Deposit of collections.

1. Before selling or offering for sale any pesticide for use within this state, a person shall file biennially with the commissioner an application for registration of the pesticide. The application must:
 - a. Give the name and address of each manufacturer or distributor.
 - b. Give the name and brand of each product to be registered.
 - c. Be accompanied by a current label of each product to be registered.
 - d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be registered.
 - e. Be accompanied by a material safety data sheet for each product to be registered.

2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.
3. Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to which it is issued to another ownership. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.
4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.
5. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations under this section. The state treasurer shall credit the registration fees to the environment and rangeland protection fund.

4.1-34-04. Reporting requirements.

Within thirty days after request by the commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

4.1-34-05. Protection of trade secrets.

1. In submitting data required by this chapter, the applicant may:
 - a. Clearly mark any portions that the applicant requests the commissioner to determine to be trade secrets or commercial or financial information; and
 - b. Submit the marked material separately from other material.
2. After consideration of the applicant's request submitted under subsection 1, the commissioner may not make any information public which in the commissioner's judgment contains or relates to trade secrets or to commercial or financial information obtained from an applicant. When necessary, information relating to formulas of products may be revealed to any state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the commissioner.
3. If the commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure under this section, the commissioner shall notify the applicant or registrant by certified mail. The

commissioner may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

4.1-34-06. Determinations - Rules - Uniformity.

1. After providing an opportunity for a hearing, the commissioner may:
 - a. Declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances.
 - b. Determine whether pesticides are highly toxic to humans and whether their use should be restricted.
 - c. Determine standards of coloring or discoloring for pesticides and to subject pesticides to the requirements of subdivision c of subsection 1 of section 4.1-34-02.
2. The commissioner may adopt appropriate rules for carrying out this chapter, including rules providing for the collection and examination of samples of pesticides or devices. The commissioner also may adopt rules, applicable to and in conformity with the primary standards established by this chapter, prescribed by the United States environmental protection agency with respect to pesticides to provide uniformity among the requirements of the several states and the federal government.

4.1-34-07. Enforcement.

The commissioner shall examine pesticides or devices for compliance with this chapter. If after examination the commissioner intends to initiate criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to the person. Any person notified must be given an opportunity to present the person's views, either orally or in writing, with regard to the contemplated proceedings and if thereafter in the opinion of the commissioner it appears the chapter has been violated by the person, the commissioner shall refer the facts to the state's attorney for the county in which the violation has occurred with a copy of the results of the analysis or the examination of the article. The commissioner is not required to report for prosecution or for the institution of libel proceedings minor violations of this chapter if the commissioner believes the public interests will be best served by a suitable written notice of warning. A state's attorney to whom any violation is reported under this section, without delay, shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction. The commissioner, by publication in the manner the commissioner prescribes, shall give notice of all judgments entered in actions instituted under the authority of this chapter.

4.1-34-08. Stop-sale orders.

The commissioner may issue and enforce a stop-sale order to the owner or custodian of any pesticide when the commissioner finds that the product is being offered for sale in violation of this chapter. The order must direct the product be held at a designated place until released in writing by the commissioner. The owner or custodian of the product has the right to petition a court of competent jurisdiction in the county where the product is found for an order releasing the product for sale in accordance with the findings of the court.

4.1-34-09. Exemptions.

1. The penalties provided for violations of section 4.1-34-02 do not apply to:
 - a. A carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the commissioner to copy all records showing the transactions in and movement of the articles.
 - b. A public official of this state or the federal government engaged in the performance of official duties.
 - c. The manufacturer or shipper of a pesticide for experimental use only:
 - (1) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
 - (2) By others if the pesticide is not sold and if the pesticide container is plainly and conspicuously marked "For experimental use only - Not to be sold", together with the manufacturer's name and address.
 - c. A person using, distributing, selling, or offering for sale an unregistered pesticide for which the United States environmental protection agency has granted an emergency exemption for at least one use in North Dakota under section 18 of the federal Act.
2. An article may not be deemed in violation of this chapter when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter apply.

4.1-34-10. Minimum-risk pesticide exemption.

1. Section 4.1-34-02 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the federal Act, provided the person has obtained a certificate of exemption from the commissioner.
2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
 - a. The name and address of the product's manufacturer or distributor;
 - b. The name and brand name of the product;
 - c. A current label for the product; and
 - d. A fee equal in amount to the fee set under section 4.1-34-03 for the registration of a pesticide.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.

4.1-34-11. Penalties.

Any person violating this chapter is guilty of an infraction. If a registrant was issued a warning by the commissioner under this chapter, upon violating this chapter, other than subdivision a of subsection 1 of section 4.1-34-02, that registrant is guilty of a class A misdemeanor and the registration of the article with which the violation occurred automatically terminates. A pesticide for which the registration has been terminated may not again be registered unless the pesticide, its labeling, and other material required to be submitted appear to the commissioner to comply with the requirements of this chapter. In addition to any criminal penalty, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

4.1-34-12. Seizures.

1. Any pesticide or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state is liable to be proceeded against in any proper court of jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation:
 - a. In the case of a pesticide:
 - (1) If it is adulterated or misbranded;
 - (2) If it has not been registered under section 4.1-34-03;
 - (3) If it fails to bear on its label the information required by this chapter; or
 - (4) If it is a white powder pesticide and is not colored as required under this chapter.
 - b. In the case of a device, if it is misbranded.
2. If the pesticide is condemned, after entry of decree, the pesticide must be disposed of by destruction or sale as the court may direct and any proceeds, less legal costs, must be paid to the state treasurer. The pesticide may not be sold contrary to the provisions of this chapter. Upon payment of cost and execution and delivery of a good and sufficient bond conditioned that the pesticide may not be disposed of unlawfully, the court may direct the pesticide be delivered to its owner for relabeling or reprocessing. When a decree of condemnation is entered against the pesticide, court costs and fees and storage and other proper expenses must be awarded against any person intervening as claimant of the pesticide.

4.1-34-13. Cooperation.

The commissioner may cooperate and enter agreements with any other agency of this state or of the federal government or any other state or agency thereof for the purpose of carrying out this chapter and securing uniformity of regulations.

4.1-34-14. Experimental use permits.

If the state is authorized by the administrator of the United States environmental protection agency to issue experimental use permits, the commissioner may:

1. Issue an experimental use permit to an applicant if the commissioner determines that the applicant requires the permit to accumulate information necessary to register a pesticide use. An application for an experimental use permit may be filed when an application for registration is filed or before or after filing the application.
2. Prescribe terms, conditions, and the period of time for use under the experimental use permit.
3. Revoke an experimental use permit if the commissioner finds the permit's terms or conditions are being violated or that the permit's terms and conditions are inadequate to avoid unreasonable adverse effects to human health or the environment.

4.1-34-15. Minimum-risk pesticide - Certificate of exemption.

1. Section 4.1-34-02 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the federal Act, provided the person has obtained a certificate of exemption from the commissioner.
2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
 - a. The name and address of the product's manufacturer or distributor;
 - b. The name and brand name of the product;
 - c. A current label for the product; and
 - d. A fee equal in amount to the fee set under section 4.1-34-03 for the registration of a pesticide.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.
4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.

SECTION 4. Chapter 4.1-35 of the North Dakota Century Code is created and enacted as follows:

4.1-35-01. Definitions.

As used in this chapter:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an irrigation system.
2. "Commissioner" means the agriculture commissioner and includes any employee or agent designated by the commissioner.
3. "Fertilizer" means any fertilizer as defined by section 4.1-40-01.
4. "Pesticide" means that term defined in section 4.1-33-01.
5. "State engineer" means the state engineer appointed by the state water commission under section 61-03-01.

4.1-35-02. Compliance with rules.

Farm irrigation systems used for chemigation which are designed, constructed, and operated in compliance with rules adopted under this chapter are considered to be in compliance with this chapter.

4.1-35-03. Rules - Standards for chemigation, installation, maintenance, and modifications.

The commissioner shall adopt rules regulating chemigation through irrigation systems in this state to minimize the possibility of chemical, pesticide, fertilizer, or other contamination of irrigation water supply and other rules as necessary to implement this chapter. The commissioner may establish by rule standards for application of pesticides and fertilizers through irrigation systems; for installation and maintenance of all equipment and devices used for chemigation purposes; modifications or changes in design, technology, or irrigation practices; or other purposes relating to the use or placement of equipment or devices. The commissioner may adopt rules requiring periodic calibration and inspection of equipment and system operation during periods of chemigation.

4.1-35-04. Inspections - Assistance of state engineer.

The state engineer shall cooperate with the commissioner in the inspection of any irrigation system using chemigation. The state engineer shall inform the commissioner of any violation of this chapter which is discovered in the course of the state engineer's regular inspections of irrigation systems using chemigation.

4.1-35-05. Enforcement.

1. The commissioner shall enforce this chapter and any rules adopted under this chapter.
2. The commissioner may seek an injunction in the district court in the county in which a violation occurs or may issue a cease and desist order to any person for any alleged violation of this chapter or any rules adopted under this chapter.
3. For the purpose of carrying out the provisions of this chapter, the commissioner and the state engineer may enter upon any public or private premises at reasonable times in order to:

- a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
- b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
- c. Inspect storage or disposal areas.
- d. Inspect or investigate complaints of injury to humans or animals.
- e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
- f. Observe the use and application of a pesticide or fertilizer through chemigation.
- g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or use.

4.1-35-06. Penalties.

1. Any person who violates a provision of this chapter or any rule adopted under this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing the provisions of this chapter or any rules adopted under this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case also be deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. Any person found to have violated a provision of this chapter or rule adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

SECTION 5. Chapter 4.1-36 of the North Dakota Century Code is created and enacted as follows:

4.1-36-01. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.

1. The definitions contained in section 4.1-33-01 apply to this chapter.
2. In consultation with an advisory board consisting of the state health officer and director of the North Dakota state university extension service, two individuals selected by the agriculture commissioner representing agribusiness organizations, and two individuals selected by the agriculture commissioner representing farm organizations, the commissioner shall continue to implement project safe send. The purpose of the project is to:
 - a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide

containers. The commissioner may limit the type and quantity of pesticides and pesticide containers acceptable for collection.

- b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of this project, the advisory board members selected by the commissioner are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

4.1-36-02. Project scope and evaluation.

The project described in section 4.1-36-01 must occur in areas to be determined by the agriculture commissioner in consultation with the advisory board described in section 4.1-36-01.

4.1-36-03. Project safe send pesticide and pesticide container collection - User fees.

The agriculture commissioner, in consultation with the advisory board for the project safe send pesticide and pesticide container disposal program, may charge a fee for collection of rinsate. The fees must be established at a level that will generate enough revenue to cover the cost of disposal associated with the rinsate that is collected. Collections from this fee must be deposited in the environment and rangeland protection fund.

4.1-36-04. Report on pesticide container disposal program.

The agriculture commissioner shall submit a biennial report to a joint meeting of the house of representatives and senate agriculture committees on the status of the pesticide container disposal program.

SECTION 6. Chapter 4.1-37 of the North Dakota Century Code is created and enacted as follows:

4.1-37-01. Anhydrous ammonia safety rules.

The agriculture commissioner shall adopt rules necessary to implement this chapter and adopt the 2014 American national standard safety requirements for the storage and handling of anhydrous ammonia. The commissioner may adopt rules that deviate from the 2014 American national standard safety requirements if certain provisions of the standard impose undue hardship or if literal adherence to the provisions fails to provide adequate safety.

4.1-37-02. Definition.

As used in this chapter, "anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.

4.1-37-03. License required - Anhydrous ammonia facilities constructed after June 30, 1985.

The owner or operator of an anhydrous ammonia storage facility shall apply to the agriculture commissioner and to the board of county commissioners for a license to site and operate the facility. An anhydrous ammonia storage facility may not be operated without a license issued by the agriculture commissioner and the board of county commissioners of the county in which the facility is located. Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may receive a license under this chapter regardless of noncompliance with the siting requirements. The commissioner or the board may deny a license for failure to remit the proper fee for failure to comply with the siting requirements of this chapter and rules adopted under this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the facility does not meet the initial inspection standards required by this chapter and by any rules adopted under this chapter. To obtain a license, an applicant shall submit with the application two sets of drawings or photographs showing, and two signed affidavits stating, the facility has been measured and meets the siting requirements. The drawings or photographs must show the proposed location of the tank and the surroundings in all directions. A set of drawings or photographs must be provided to the agriculture commissioner and a set must be provided to the board of county commissioners.

4.1-37-04. State license fee.

The agriculture commissioner shall charge a one-time twenty-five dollar fee for a license for each anhydrous ammonia storage facility and an additional one hundred dollars for each retail and storage site. Expansion of an existing anhydrous ammonia storage facility does not require reapplication for licensing, but all siting requirements must be met. The license is valid indefinitely but may not be transferred. A new license is required when an anhydrous ammonia storage facility changes ownership.

4.1-37-05. State siting requirements - Anhydrous ammonia storage facilities constructed after June 30, 1985.

For facilities constructed after June 30, 1985:

1. Any anhydrous ammonia storage facility with a container nominal capacity of less than one hundred thousand gallons [378541.2 liters] must be located at least:
 - a. Fifty feet [15.24 meters] from the line of any adjoining property, which may be built upon, or any highway or railroad mainline.
 - b. Four hundred fifty feet [137.16 meters] from any place of public assembly or residence, other than the company's business office.
 - c. Seven hundred fifty feet [213.36 meters] from any institutional residence.

2. Any anhydrous ammonia storage facility with container nominal capacity of one hundred thousand gallons [378541.2 liters] or more must be located at least:
 - a. Fifty feet [15.24 meters] from the property line of adjoining property, which may be built upon, or any highway or railroad mainline.
 - b. Six hundred feet [182.88 meters] from any place of public assembly or residence, other than the company's business office.
 - c. One thousand feet [300.48 meters] from any institutional residence.
3. Upon relocation of any permanent storage container to an anhydrous ammonia storage facility, the container must be hydrostatically pressure tested at the maximum allowable working pressure of the vessel, wet fluorescent magnetic particle tested, also referred to as black light tested, or any other acceptable testing method as determined by the agriculture commissioner. Before the container may be put into service and before licensing may occur, proof of testing must be supplied to the board of county commissioners and the agriculture commissioner.
4. All valves and other appurtenances to any anhydrous ammonia storage facility must be protected against physical damage. All shutoff valves must be kept closed and locked when not in use and when the facility is unattended.
5. Any anhydrous ammonia storage facility relocated or constructed after August 1, 1995, may not be located within city limits, unless approved by the city.

4.1-37-06. Transfer hose requirements.

1. Any transfer hose utilized at an anhydrous ammonia storage facility:
 - a. Which is a liquid transfer hose and is not drained of liquid upon completion of transfer operations must be equipped with an approved shutoff valve at the discharge end.
 - b. Must have a hydrostatic relief valve or equivalent must be installed in each section of hose or pipe in which liquid ammonia can be isolated between shutoff valves to relieve the pressure that could develop from the trapped liquid. If an equivalent pressure relief device is used, the maximum accumulated pressure possible within the system may not exceed the limits of the system. A hydrostatic relief valve must be installed between each pair of valves in which liquid is trapped. The start-to-discharge pressure setting of the relief valve must not be less than three hundred fifty pounds per square inch [2413.18 kilopascals] gauge nor more than four hundred pounds per square inch [2757.92 kilopascals] gauge.
 - c. Must have etched, cast, or impressed on the outer coating all of the following:
 - (1) The words "ANHYDROUS AMMONIA".
 - (2) The maximum working pressure of the transfer hose.
 - (3) The name of the manufacturer of the hose.

- (4) The date of manufacture or the expiration date of the hose.
- d. Which is cut, scraped, cracked, or weathered so that the inner white cord is visible must be replaced. A transfer hose with an expiration date printed on the hose must be replaced prior to that date. Transfer hoses without an expiration date must be replaced as follows:
- (1) Rayon hoses must be replaced within two years of the date of manufacture.
 - (2) Nylon hoses must be replaced within four years of the date of manufacture.
 - (3) Steel-reinforced hoses must be replaced within six years of the date of manufacture.
2. Notwithstanding the replacement dates determined under subdivision d of subsection 1 for transfer hoses with or without an expiration date, an additional year must be allowed for replacement of transfer hoses in order to take into account delays in the original installation of transfer hoses.

4.1-37-07. Pressure relief devices.

Bulk storage containers constructed according to the American society of mechanical engineers code, and all nurse tanks, must be equipped with pressure relief valves constructed according to the American society of mechanical engineers code and capacity certified by the national board of boiler and pressure vessel inspectors. A pressure relief valve using nonmetallic seats must be replaced every five years with a new valve meeting the standards specified in this section. A pressure relief valve using metallic seats must be tested, and repaired if deemed necessary, every five years in lieu of replacement. Repairs deemed necessary must be made by the valve manufacturer or by a safety valve repair organization having a valid "VR" certificate of authorization for the repairs from the national board of boiler and pressure vessel inspectors.

4.1-37-08. Inspection.

1. The agriculture commissioner shall develop and implement an initial and periodic inspection program for anhydrous ammonia storage facilities.
2. The agriculture commissioner shall inspect each anhydrous ammonia storage facility at least once every five years and may inspect any implement of husbandry designed to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage facility.
3. The agriculture commissioner may inspect any anhydrous ammonia storage facility if the commissioner has reason to believe violations of safety standards exist.
4. The agriculture commissioner may revoke or suspend the license of any anhydrous ammonia storage facility for a violation of this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any implement of husbandry designed to apply anhydrous ammonia which is found unsafe or hazardous.

4.1-37-09. Reinstalled and secondhand anhydrous ammonia storage containers - Requirement.

1. A person intending to store anhydrous ammonia in a reinstalled or secondhand container, including a nurse tank, shall furnish the 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 only applicable to the owner of an anhydrous ammonia storage container installed in this state before November 1, 1987, if the storage container is reinstalled at another location.

4.1-37-10. Use of fees - Safety promotion - Administration - Inspections.

All fees collected under this chapter must be used by the agriculture commissioner to promote safety in anhydrous ammonia use and storage, administer the program, and inspect facilities.

4.1-37-11. Prohibitions.

The following actions are prohibited:

1. Filling a nurse tank directly from a railcar;
2. Filling or using a nurse tank that has an outdated hose;
3. Filling or using a nurse tank that has outdated relief valves;
4. Towing more than two nurse tanks on a public road;
5. Filling department of transportation transport containers not meeting the requirements of the department of transportation;
6. Filling anhydrous ammonia storage containers not meeting the requirements of this chapter;
7. Filling a storage container or nurse tank while unattended;
8. Making repairs or additions of appurtenances directly to pressurized storage containers or nurse tanks by any individual not authorized under rules adopted by the commissioner;
9. Painting or obscuring the American society of mechanical engineers data plates on storage containers or nurse tanks;
10. Painting hydrostatic safety and safety relief valves on storage containers or nurse tanks;
11. Filling nonrefrigerated storage containers or nurse tanks beyond the filling densities permitted by the American national standards institute K61.1, section 5.9.1; and

12. Using the American society for testing and materials A-53 type f piping for anhydrous ammonia piping systems.

4.1-37-12. Anhydrous ammonia - Bulk delivery.

Upon obtaining a commercial driver's license with an endorsement for hazardous materials, an individual may transport anhydrous ammonia in a bulk delivery vehicle and fill nurse tanks with anhydrous ammonia from the bulk delivery vehicle.

4.1-37-13. Hydrostatic test procedures.

Any hydrostatic test conducted under section 4.1-37-05 must comply with the requirements of the national board inspection code (ANSI-NB 23) and be conducted in a manner approved by the agriculture commissioner.

4.1-37-14. Wet fluorescent magnetic particle test procedures.

Any wet fluorescent magnetic particle test of a pressure vessel weld conducted under section 4.1-37-05 must comply with the requirements of the society for nondestructive testing SNT-TC-1A standard and must be conducted by a person certified as a level II technician by the society.

4.1-37-15. 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 may 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. The agriculture 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; or
 - c. Inspect any premises or other place where anhydrous ammonia or related devices are held for distribution, sale, or use.
5. If a civil penalty is imposed under section 4.1-37-16 by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may initiate a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued under this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

4.1-37-16. Penalty.

1. Any person violating 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 is deemed to be the act, omission, or failure of the person as well as that of the person employed.
3. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an administrative hearing.

SECTION 7. Chapter 4.1-38 of the North Dakota Century Code is created and enacted as follows:

4.1-38-01. Risk management program - Anhydrous ammonia.

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.

4.1-38-02. Risk management program - Enforcement authority.

If the agriculture commissioner determines 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 4.1-38-01, 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 8. Chapter 4.1-39 of the North Dakota Century Code is created and enacted as follows:

4.1-39-01. Crop protection product harmonization and registration board - Recovery of funds.

The crop protection product harmonization and registration board may accept funds for expenses paid relating to the registration of pesticides or donations offered to or for the benefit of the board. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. Whenever possible, the board shall attempt to recover funds expended relating to the registration of pesticide. The board shall adopt rules to administer this section.

4.1-39-02. Crop protection product harmonization and registration board - Membership - Duties - Grants.

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

members. The governor or the governor's designee shall serve as chairman of the board.

3. The board shall:

- a. Identify and prioritize crop protection product labeling needs;
- b. Explore the extent of authority given to this state under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
- c. Identify the data necessary to enable registration of a use to occur in a timely manner;
- d. Determine necessary research to fulfill the data requirements for activities listed in this section;
- e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
- f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
- g. Pursue opportunities to make more crop protection product options available to state agricultural producers through any means the board determines advisable.

4. The board may contract with a consultant to provide studies, research, or information regarding crop protection product registration and labeling needs.

5. The board may administer a grant program through which agriculture commodity groups may apply for funds to be used to address issues related to the registration of crop protection products. To be eligible for a grant, an applicant must submit an application to the board requesting a specific amount of funds, specifying the exact purposes for which the grant would be used, and providing a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.

6. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation and expense reimbursement from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings.

7. The board may adopt rules to implement this section.

4.1-39-03. Crop protection products - Canadian labels.

The agriculture commissioner, with the advice and consent of the appropriate agricultural commodity group, may authorize the sale and use in this state of a crop protection product that has a Canadian label, if the commissioner determines that a crop protection product having an American label contains substantially similar active

ingredients and that the importation and use of the product with a Canadian label does not violate federal law. The commissioner shall require an applicator to possess the American label and apply the product in accordance with the American label provisions.

4.1-39-04. Special local needs exemption - Tolerances.

The agriculture commissioner, in cooperation with the environmental protection agency, shall use tolerance data established or obtained in North America in pursuing special local needs exemptions for crop protection products under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

4.1-39-05. Crop protection products - Registration process - Joint labeling.

The governor and the agriculture commissioner shall work with all appropriate public and private entities to foster the development of a single, uniform process for the joint North American labeling of crop protection products not available for sale and use in this state as of April 19, 1999.

4.1-39-06. Crop protection products - Request to petition for registration.

On the written request of any agricultural commodity group, the agriculture commissioner shall petition the environmental protection agency for the American registration of a crop protection product approved for use in Canada.

4.1-39-07. Environment and rangeland protection fund.

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

4.1-39-08. Minor use pesticide fund - Continuing appropriation.

The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

SECTION 9. Chapter 4.1-40 of the North Dakota Century Code is created and enacted as follows:

4.1-40-01. Definitions.

As used in this chapter:

1. "Brand" means a term, design, or trademark, used in connection with one or several grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, or plant amendments.
2. "Bulk" means in a nonpackaged form.

3. "Compost" means a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that may have inorganic fertilizer added to promote decomposition.
4. "Deficiency" means an amount of plant nutrient or active ingredient found by analysis to be less than the amount guaranteed, resulting from a lack of plant nutrient, active ingredients, or uniformity.
5. "Distributor" means a person who imports, consigns, manufactures, produces, compounds, mixes, or blends or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments in this state.
6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by rule of the commissioner.
8. "Fertilizer material" means a fertilizer which:
 - a. Contains no more than one of the primary plant nutrients;
 - b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
 - c. Is derived from a plant or animal residue or byproduct or a natural material deposit and has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
9. "Grade" means the percentages of total nitrogen, available phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis".
10. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
11. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.
12. "Label" means all written, printed, or graphic materials upon or accompanying any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting their sale.
13. "Licensee" means a person licensed by the commissioner to distribute fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment.

14. "Manipulated" means to have manufactured, blended, or mixed fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments, or to have treated in any manner any animal or vegetable manures, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.
15. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.
16. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments.
17. "Official sample" means any sample of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment, taken and designated as "official" by the commissioner.
18. "Organic" in reference to fertilizer nutrients, means only naturally occurring substances, generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
19. "Percent" or "percentage" means the percentage by weight.
20. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
21. "Plant nutrient" means a substance generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
22. "Primary plant nutrients" means nitrogen, phosphate, and potash.
23. "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under this chapter.
24. "Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments means:
 - a. Transferring or offering to transfer ownership through a sale, exchange, gift, or distribution; or
 - b. Receiving, accepting, holding, or possessing for sale, exchange, gift, or distribution.
25. "Soil amendment" means any substance intended to improve the characteristics of the soil except unmanipulated animal or vegetable manures, pesticides, and fertilizers, unless the fertilizer is represented to contain, as an

active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

26. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.
27. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

4.1-40-02. Product registration - Fees.

1. Each brand and grade of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, and 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.
2. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by:
 - a. A current product label; and
 - b. A fee of fifty dollars per product.
3. Each brand and grade registration is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
4. Any request for a registration renewal received after July thirty-first must be assessed a penalty of one hundred dollars per product.
5.
 - a. A distributor is not required to register any product listed in subsection 1 if that product is already registered by another person, providing the label complies with the issued registration.
 - b. A distributor is not required to register a custom-blended fertilizer combination, blended to the customer's specification, if the fertilizer combination provided contains only products registered under subsection 1.
 - c. Compost that is transferred between parties without compensation does not require registration.
6. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4.1-40-03. Distributor's license - Fees.

1. A person may not distribute any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner.
2. A license is required for each location or mobile mechanical unit used by a distributor in the state.
3. The application for a license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars.

4. A license is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
5. Any license renewal application received after July thirty-first must be assessed a penalty of one hundred dollars per location.
6. Any license issued under this section:
 - a. Is not transferable;
 - b. Must be conspicuously posted at each location used by the distributor; and
 - c. Must be carried in each mobile mechanical unit operated by the distributor in the state.
7. The requirements of this section do not apply to persons that distribute only:
 - a. Specialty fertilizers; or
 - b. Seed inoculants.
8. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4.1-40-04. Proof of effectiveness.

The commissioner may require proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The commissioner must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The commissioner may accept or reject other sources of proof as supplemental evidence.

4.1-40-05. Guaranteed analysis.

1. Guaranteed analysis must be claimed as follows:
 - a. Total Nitrogen (N) _____ percent;
 - b. Available Phosphate (P_2O_5) _____ percent; and
 - c. Soluble Potash (K_2O) _____ percent.
2. The total phosphate or degree of fineness, or both, may also be guaranteed, in the case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials.
3. Rules implemented under this chapter may allow or require guarantees for plant nutrients other than nitrogen, phosphorus, and potassium.
 - a. Guarantees under this subsection must be expressed in the form of the element.

- b. The commissioner may require that the sources of other nutrients, including oxides, salt, and chelates, be stated on the application for registration and included as a parenthetical statement on the label.
 - c. Other beneficial substances or compounds, determinable by laboratory methods, may be guaranteed with permission of the commissioner after consultation with the director of the North Dakota state university extension service.
4. Any guaranteed plant nutrients, other substances, or compounds are subject to inspection and analysis according to the methods and rules prescribed by the commissioner.
5. a. The commissioner, by rule, may require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
- b. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition, including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

4.1-40-06. Label requirement.

Any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment distributed in this state must be labeled.

1. If the product is in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container. The label must include:
- a. The net weight of the product;
 - b. The brand;
 - c. The grade, unless no primary nutrients are claimed;
 - d. The guaranteed analysis; and
 - e. The name and address of the registrant.
2. If the product is distributed in bulk, a document providing the same information required in subsection 1 must accompany the delivery and be provided to the end user at the time of delivery.
3. A fertilizer formulated according to specifications furnished by a consumer prior to mixing must be labeled to show the net weight, the guaranteed analysis or amount of each plant nutrient it contains in pounds [kilograms], and the name and address of the registrant.

4.1-40-07. Inspection fees - Tonnage reports - Penalty.

1. a. An inspection fee of ten dollars or twenty cents per ton [907.18 kilograms], whichever is greater, must be paid to the commissioner on all fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, and plant amendments distributed in this state.

- b. This subsection does not apply to:
- (1) Exchanges of product between manufacturers and distributors; or
 - (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.
2. a. On or before January thirty-first, each licensed person who distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to an end user in this state shall:
- (1) File with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year; and
 - (2) Submit to the commissioner the inspection fee required by this section.
- b. If a person fails to submit an inspection fee, at the time and in the manner required by this section, the commissioner may impose a penalty of ten dollars or ten percent of the amount due, whichever is greater.
3. a. On or before January thirty-first, each licensed person that distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to a licensed entity in this state shall file with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year.
- b. If a person fails to file the form, at the time and in the manner required by this subsection, the commissioner may impose a late fee of thirty-five dollars.
4. Each distributor shall keep all records regarding purchases and sales for a period of three years. The records may be examined by the commissioner upon request.
5. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4.1-40-08. Inspection, sampling, analysis.

1. To determine compliance with this chapter and rules implemented under this chapter, the commissioner may enter real property during regular business hours and access any structure or personal property to sample, inspect, analyze, and test fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed in this state.
2. The commissioner shall adopt methods of analysis and sampling from reputable sources such as the Journal of the AOAC International.
3. A single package may constitute an official sample. In determining whether any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is deficient, the commissioner shall only consider the analysis of the official sample.

4. If the results of the commissioner's official analysis indicate that a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment may be the subject of a penalty or other legal action, the commissioner shall forward the analysis to the registrant at least ten days before the report is submitted to the purchaser. If during the ten-day period no adequate evidence to the contrary is made available to the commissioner by the registrant, the report becomes official.
5. The commissioner shall retain any official samples found to be deficient for thirty days following the issuance of the analytical report.
6. Upon request, the commissioner shall furnish to the registrant a portion of any sample found to be the subject of a penalty or other legal action.

4.1-40-09. Misbranding.

1. A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment.
2. A fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is misbranded if:
 - a. False or misleading statements concerning the product are disseminated in any manner or by any means;
 - b. The product label carries a false or misleading statement;
 - c. The product is distributed under the name of another product;
 - d. The product is not labeled as required by this chapter or rules implemented under this chapter; or
 - e. The product is inaccurately represented as a fertilizer, or is inaccurately represented as containing a plant nutrient or fertilizer unless the plant nutrient or fertilizer conforms to the definition, if any, prescribed in rule by the commissioner.
3. In adopting rules, the commissioner shall consider commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

4.1-40-10. Publications.

The commissioner may publish:

1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments; and
2. Results of analyses based on official samples of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 4.1-40-05 and 4.1-40-06.

4.1-40-11. Rules.

The commissioner may adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

4.1-40-12. Deficiencies.

1. A product is deficient if:
 - a. One or more of its guaranteed primary plant nutrients falls below the investigational allowances and compensations established by rule;
 - b. One or more other guaranteed active ingredients falls below the investigational allowances and compensations established by rule; or
 - c. The overall index value of the fertilizer is shown below the level established by rule.
2. A nonuniformity deficiency in an official sample of mixed fertilizer is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
3. To determine the commercial index value to be applied, the commissioner shall determine at least annually the values per unit of nitrogen, available phosphate, and soluble potash in fertilizers in this state.
4. Any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment in the possession of a consumer found by the commissioner to be short in weight, a penalty must be assessed to the registrant of the product. Within thirty days after official notice from the commissioner, the registrant of the product shall pay a penalty equal to four times the value of the actual shortage to the consumer.

4.1-40-13. Cancellation of registrations.

1. The commissioner, upon compelling evidence that a registrant, licensee, or distributor used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any implemented rule, may:
 - a. Cancel the registration of any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment;
 - b. Cancel the license of any distributor;
 - c. Refuse to register any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment; or
 - d. Refuse to license any distributor.
2. The commissioner shall provide an opportunity for a hearing prior to refusing a registration or revoking a license.

4.1-40-14. Stop-sale orders.

The commissioner may issue a "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, if the commissioner finds that the product is being offered for sale in violation of this chapter or any implemented rule. The order must remain in effect until the commissioner:

1. Determines that the violation has been corrected;
2. Gives written authorization for the disposal of the product; or
3. Gives written authorization for the product to be offered for sale.

4.1-40-15. Seizure, condemnation, and sale.

1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, not in compliance with this chapter or implemented rules, is subject to seizure upon the filing of a complaint by the commissioner with the district court of the county in which the product is located.
2. If the court finds the product to be in violation of this chapter or any implemented rule and orders its condemnation, the product must be disposed of in any manner consistent with the quality of the product and the laws of the state.
3. Before ordering the disposition of a product, a court shall give the claimant an opportunity to apply for the release of the product or for permission to process or relabel the product to bring it into compliance with this chapter and implemented rules.

4.1-40-16. Violations - Criminal penalty.

1. If evidence from the examination of any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment indicates this chapter or the implemented rules have been violated, the commissioner shall notify the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken of the violation. Any person notified must be given an opportunity to be heard. After the hearing, either in the presence or absence of the person so notified, the commissioner may certify the facts to the proper prosecuting attorney if evidence exists this chapter or the implemented rules have been violated.
2. Any person violating this chapter or the implemented rules or that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty under this chapter is guilty of a class A misdemeanor.
3. All prosecutions involving the composition of a lot of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments, require a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent. The certified and signed copy of the official analysis is prima facie evidence of the composition.

4. The commissioner is not required to initiate prosecution or seizure proceedings for minor violations of the chapter if the commissioner believes the public interest will be best served by a suitable written warning.
5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any implemented rule, notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

4.1-40-17. Violations - Civil penalty.

Any person that violates this chapter or an implemented rule is subject to a civil penalty in an amount up to two thousand five hundred dollars per violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative hearing.

4.1-40-18. Exchanges between manufacturers.

This chapter may not be construed to restrict or avoid sales or exchanges of fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators that mix fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments for sale or as preventing the free and unrestricted shipments of fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to manufacturers or manipulators that have registered their brands as required by this chapter.

SECTION 10. AMENDMENT. Subsection 19 of section 19-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19. "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a pesticide within the meaning of chapter ~~19-184.1-34~~, and which is used in the production, storage, or transportation of raw agricultural commodities.

SECTION 11. AMENDMENT. Section 23-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

23-01-01.1. State department of health to replace state department of health and consolidated laboratories.

Wherever the terms "North Dakota state department of health", "department of health", "health department", "state department of health and consolidated laboratories", "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", or "state laboratories director" appear in this code, the term "state department of health" must be substituted therefor.

—Wherever the terms "~~state food commissioner and chemist~~" and "~~commissioner~~" when referring to the state food commissioner and chemist appear in chapters 19-17 and 19-18, the term "state department of health" must be substituted therefor.

²⁶ **SECTION 12. AMENDMENT.** Section 23-01-25 of the North Dakota Century Code is amended and reenacted as follows:

23-01-25. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 4.1-34, 4.1-40, or 19-13.1, ~~19-18,~~ ~~or 19-20.1~~ must be performed by the state department of health for the agriculture commissioner at no charge.

SECTION 13. REPEAL. Chapters 19-18, 19-20.1, 19-20.2, and 19-20.3 of the North Dakota Century Code are repealed.

Approved April 5, 2017

Filed April 5, 2017

²⁶ Section 23-01-25 was also amended by section 9 of Senate Bill No. 2028, chapter 68.

CHAPTER 68

SENATE BILL NO. 2028

(Legislative Management)
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-25, 4.1-27, 4.1-28, 4.1-30, 4.1-31, 4.1-32, 4.1-41, and 4.1-53 of the North Dakota Century Code, relating to revisions of agriculture laws regarding dairy products regulation, livestock auction markets, satellite video livestock auction markets, the purchase of livestock by packing plants, meat inspection, rendering plants, commercial feed laws, and livestock medicine; to amend and reenact sections 23-01-25, 36-21-01, 36-21-10, 36-21-11, 36-21-12, 36-21-13, 36-21-15, 36-21-18, and 36-21-19 of the North Dakota Century Code, relating to general livestock provisions; to repeal chapters 19-13.1, 19-14, 36-05, 36-05.1, 36-06, 36-07, section 36-21-05, and chapter 36-24 of the North Dakota Century Code, relating to commercial feed laws, livestock medicine, livestock auction markets, satellite video livestock auction markets, the purchase of livestock by packing plants, rendering plants, general livestock provisions, and meat inspection; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-25 of the North Dakota Century Code is created and enacted as follows:

4.1-25-01. Definitions.

1. "Cheese factory" means a facility that makes cheese for commercial purposes.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Condensery" means a facility where condensed or evaporated milk is produced.
4. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
5. "Dairy farm" means a place where one or more dairy animals are kept.
6. "Dairy product" includes milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.
7. "Department" means the department of agriculture.
8. "Distributor" means a person that provides storage, transportation, delivery, or distribution of dairy products to any person who sells dairy products.

9. "Drying plant" means a facility that manufactures dry milk products by removing water from milk or milk products.
10. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination of them, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from those products, to which has been added, blended, or compounded with, any fat or oil, other than milk fat, to imitate a dairy product. "Filled dairy products" may not be construed to mean or include:
 - a. Any distinctive proprietary food compound not readily mistaken for a dairy product, if the compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
 - b. Any dairy product flavored with chocolate or cocoa or the vitamin content of which has been increased, or both, if the fats or oils other than milk fat contained in the product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredth per centum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Margarine.
11. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a rating of the quality of the product.
12. "Ice cream plant" means a facility that makes ice cream for commercial purposes.
13. "Ice milk plant" means a facility that makes ice milk for commercial purposes.
14. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
 - a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
 - b. The packaging used resembles the packaging used for milk or for a milk product.
 - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
 - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.

- e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
15. "Milk hauler" means a person that owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
16. "Milk plant or bottling plant" means a facility where milk or milk products are collected, handled, processed, stored, and prepared for distribution.
17. "Milk solids or total solids" means the total amount of solids in milk.
18. a. "Pasteurization" as applied to milk or skim milk means either:
- (1) The process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at that temperature continuously for at least thirty minutes; or
- (2) Heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at that temperature continuously for at least fifteen seconds in approved and properly operated equipment.
- b. When applied to cream for butter making, "pasteurization" means the cream must be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds.
- c. This subsection may not be construed as barring any other process that has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the commissioner.
19. "Pasteurized Milk Ordinance" means the 2015 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.
20. "Peddler" means a person that purchases milk or milk products and sells the milk or milk products directly to consumers at any place other than from a store, stand, or other fixed place of business.
21. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
22. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating,

- packaging, coagulating, or treating in any manner that changes the natural, physical, or chemical properties of the original product.
23. "Producer dairy" means a dairy farm that sells milk or cream to a dairy plant for processing or manufacturing.
24. "Producer-processor" or "producer-distributor" means a producer that is also a processor or distributor.
25. "Raw milk or raw milk products" means products that have not been treated by the process of pasteurization.
26. "Retail" means the sale of milk or milk products directly to the consumer.
27. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use of raw milk or milk products from a dairy farm to a dairy facility.
28. "Sampling" means a procedure taking a portion of milk or milk products for grading or testing.
29. "Shared animal ownership agreement" means any contractual arrangement under which an individual:
- a. Acquires an ownership interest in a milk-producing animal;
 - b. Agrees to pay another for, reimburse another for, or otherwise accept financial responsibility for the care and boarding of the milk-producing animal at the dairy farm; and
 - c. Is entitled to receive a proportionate share of the animal's raw milk production as a condition of the contractual arrangement.
30. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
31. "Standard Methods" means the seventeenth edition of the Standard Methods for the Examination of Dairy Products published by the American public health association.
32. "Testing" means an examination of milk or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition of the product.
33. "Wholesale" means the sale of milk or milk products to a retail dealer for resale.

4.1-25-02. Licenses required - Fees - Term.

1. The license required by this section must be obtained for each place of business in this state owned or operated by:
 - a. A producer-processor, peddler, or distributor;
 - b. A person purchasing milk or milk products for processing or manufacturing;

- c. A person owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, or milk plant;
 - d. A person owning, operating, or leasing any other business engaged in the processing or manufacturing of milk or milk products; and
 - e. An organization acquiring milk or milk products on its own behalf or as an agent of others.
2. Application for a license must be made to the commissioner upon forms prescribed by the commissioner. An application for a license constitutes the implied consent of the applicant for department inspections. If the commissioner finds the applicant conforms to the North Dakota laws and the rules of the commissioner, the commissioner shall issue a license to conduct the operations listed on the license.
 3. If a licensee wishes to conduct operations other than those listed on an existing license, the licensee may make an application to the commissioner for a license to conduct additional operations. If the commissioner finds the additional operations are in conformance with North Dakota laws and the rules of the commissioner, the commissioner shall approve them.
 4. The license must be posted conspicuously in each licensed business.
 5. All licenses issued under this section expire on the thirtieth day of June of each year and are not transferable.
 6. The license fee is twenty-five dollars.
 7. Every organization acquiring milk or milk products as an agent of others is deemed to be a purchaser of milk from a dairy producer.

4.1-25-03. Financial records release authorization with application for licensure.

A purchaser of milk in North Dakota shall file with the license application a release authorizing the commissioner to access the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant, conducting an investigation of a complaint against the applicant due to a complaint, or when evidence is obtained establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

4.1-25-04. Financial condition - Assurance of prompt payment.

Each applicant for a license under section 4.1-25-02 who intends to purchase milk from dairy producers shall satisfy the department that the financial condition of the applicant is adequate to assure prompt payment to the dairy producers for purchased milk.

4.1-25-05. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited.

Each applicant for a license under section 4.1-25-02 who purchases milk from a dairy producer annually shall file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the applicant for which the statement is rendered, prepared as of the close of the most recent fiscal year of the applicant. In lieu of filing an audited financial statement, an applicant may file other forms of security as provided in section 4.1-25-06. All audited financial statements must be reviewed by the Bank of North Dakota. All statements under this section are confidential and not open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant.

4.1-25-06. Surety bond, trustee agreement, or other security or assurances.

If it appears the financial condition of any applicant or licensee who purchases milk from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4.1-25-05, the department shall require from an applicant or licensee security or other assurances in one of the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety bond must be determined on the basis of average purchases of milk from dairy producers during the previous year. If payment for milk purchased from dairy producers is made on a weekly basis, the amount of the surety bond must be at least in an amount equal to the average weekly purchases of milk. If payment for milk purchased from dairy producers is made on a semimonthly basis, the amount of the surety bond must be at least in an amount equal to the average semimonthly purchases of milk. If the period of payment for milk purchased from dairy producers is made on a basis involving periods of time greater than semimonthly, the amount of the surety bond must be at least in an amount equal to the average purchases of milk for that greater period of time. The amount of the bond for each period of payment must also include an amount equal to at least the average purchases for three days following the close of the period of payment. The amount of the surety bond of any licensee who pays assignments to creditors of a producer of milk at a lesser frequency than the licensee pays the producer must also include an amount equal to the value of assignments from the prior payment period. The commissioner must be named as obligee, but the bond or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to that dairy producer for all milk purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers may not exceed the amount of the bond.
2. Providing an amount of protection for dairy producers equal to the amount of protection provided in subsection 1. The security must be held by the department solely for the protection of dairy producers, in one or more of the following forms:
 - a. Cash deposited with a bank or trust company and held under an escrow agreement with the department;

- b. Bonds of the United States deposited with the department;
 - c. Stocks, bonds, or other marketable securities at current market values, which have regularly reported quotations, deposited with the department;
or
 - d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.
3. The filing of an agreement providing complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and at least annually shall render a true and correct account of trustee dealings to the department and to the dairy producers.

4.1-25-07. Financial basis for license - Statement to producer - Notification to department.

All milk purchasers licensed under section 4.1-25-02 shall inform producers of the financial basis on which the license was issued, including the type and amount of security, if any, filed under section 4.1-25-06, by an annual written statement to each producer. A person may not receive milk that will increase the amount due and accrued beyond the amount represented as a basis for the issuance of a license without first notifying the department.

4.1-25-08. Additional security.

When the department determines the value of milk purchased or received from producers has increased or an increase reasonably may be anticipated, so the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4.1-25-06, the department shall require additional security to afford producers the protection intended by section 4.1-25-06. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department under this section.

4.1-25-09. Filing of security before license year.

An applicant or licensee shall file bonds or other security for the license year with the department by the first day of June immediately preceding the beginning of each license year. If an applicant or licensee fails to file a surety bond or other security by July first of the license year and has not been relieved from filing a surety bond or other security, the department shall notify producers that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk purchases for the license year.

4.1-25-10. Failure to file security - Notice to producers.

1. If an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4.1-25-09 or fails to comply with a demand for additional security, the department shall publish in newspapers having circulation in the areas where the producers whose milk is sold or delivered to the applicant or licensee reside, a notice stating:

- a. The department made a demand for additional security from the applicant or licensee;
 - b. The applicant or licensee has failed to comply;
 - c. The department does not have on file a surety bond or other security as demanded; and
 - d. Adequate security to protect producers may not be available to them.
2. In addition to a published notice to producers, the department shall send, by registered mail, a copy of the notice to each producer delivering milk to the applicant or licensee as determined from available records. The notice must be addressed to the producer's last-known address.

4.1-25-11. Out-of-state dealers, processors, or producers not exempt.

Sections 4.1-25-04 through 4.1-25-13 apply to all milk purchasers licensed under section 4.1-25-02 doing business in this state. The protection to producers afforded by sections 4.1-25-04 through 4.1-25-13 is available to the producers of any state selling milk to any licensee licensed under section 4.1-25-02, but the surety bond or other security required by sections 4.1-25-06 and 4.1-25-08 is payable only for the benefit of producers who are located within this state.

4.1-25-12. Entry, inspection, and investigation.

Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee or license applicant maintains books, papers, accounts, records, or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained by the department or by the commissioner under this section is confidential and may be used only for the administration of this chapter. The department or the commissioner may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk marketing board, or in any court proceeding in which the department or the commissioner is a party. This chapter does not prevent the department or the commissioner from using the information to compile or disseminate general statistical data so long as the data does not reveal individual information for any licensee or license applicant.

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

4.1-25-13. Records and reports.

Licensees shall maintain the records the commissioner deems necessary to assure the financial condition of the licensee is adequate to assure prompt payment to producers.

4.1-25-14. Department to become trustee upon default in required security.

If a licensee defaults on any of the required security provisions, the licensee is deemed to be insolvent for purposes of this chapter. The claim for relief for damages and the amount recovered in any action for the conversion of milk or milk products,

purchased by the licensee while the license is in effect, and the assets of the licensee not subjected to any claim in federal bankruptcy court by a secured or general creditor within four months of the appointment of the department as trustee under this chapter, constitute a trust fund in the hands of the department for all persons having a claim for relief against the licensee on the required security.

4.1-25-15. Application by department for appointment of trustee - Hearing - Appointment.

Upon the insolvency of a licensee as defined in section 4.1-25-14, the department shall apply to the district court of the county in which the licensee maintains its principal place of business for the appointment of the department as trustee. Upon notice to the licensee as the court prescribes, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine the application. If it appears to the court the licensee is insolvent within the meaning of this chapter and it is in the best interest of persons holding claims against the licensee that the department execute the trust, the court shall issue an order appointing the department as a trustee, without bond, and the department shall proceed in the manner set out in this chapter without further direction from the court.

4.1-25-16. Notice to file claims - When claims barred.

The department, as trustee, shall notify all persons having claims against the licensee personally by certified mail to file the claims with the department. Any person who fails to file a claim with the department and to surrender any receipts obtained from the licensee within thirty days after receiving notice is barred from pursuing the claim in any fund marshalled by the department as prescribed in this chapter. The department may proceed as prescribed by law when all producers have responded to the notification.

4.1-25-17. Remedy of claimants - Separate action by claimant permissible.

A claimant has no separate claim for relief against the required security of a licensee unless the department fails or refuses to apply for appointment as trustee under this chapter. Any claimant, either independently or in conjunction with other claimants, may pursue concurrently with the department any other remedy the claimant or claimants may have against the licensee, or against the property of the licensee, for the whole of their claim or claims or for any deficiency that occurs after payments have been made from the trust fund.

4.1-25-18. Appeal or compromising of action by department.

The department may prosecute an action for any claims arising under this chapter in any court, may appeal from any adverse judgment to the courts of last resort, and may settle and compromise the action whenever it is in the best interests of the claimants. Upon payment to the department of the amount of any compromise, or of the full amount of any required security, the department may exonerate the person compromising or paying from further liability growing out of the action.

4.1-25-19. Claims collections to be deposited in Bank of North Dakota.

All money collected and received by the department as trustee must be deposited in the Bank of North Dakota.

4.1-25-20. Trust fund report - Notice to claimants - Approving or modifying report.

Upon recovery of the trust fund, or so much as is possible to recover, or as is necessary to pay all outstanding claims, the department shall file a report in court showing the amount payable upon each claim, after recognizing any proper liens, pledges, assignments, or deductions with legal interest. If the fund proves insufficient to redeem all claims in full, the fund must be prorated among the claimants in a manner the department deems fair and equitable. Once the report is received from the department, the court shall notify all claimants by mail to appear on a day fixed in the notice and show cause why the report should not be approved and the funds distributed as outlined in the report. Upon such hearing the court shall approve or modify the report as justice may require and shall issue an order directing the distribution of the fund and discharging the department as trustee.

4.1-25-21. Attorney general to represent department and may employ assistants - Department need not pay court costs.

The attorney general shall represent the department in any action or proceeding brought under section 4.1-25-14, and may employ outside legal assistance when necessary. The attorney general may deduct the expense of retaining outside legal assistance from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought under section 4.1-25-14 when the fee, cost, or disbursement accrues to the state or to a county of the state.

4.1-25-22. License needed to sample, haul, or test - Training - Examination - Term - Fee.

A person may not sample, haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of the substitute. An applicant shall file an application with the department stating the type of sampling, hauling, or testing for which the applicant wishes to be licensed. Before a license is issued, the applicant shall receive training in the sampling of milk or milk products as may be required by the department, and shall pass a written examination prepared and administered by the department. The applicant must show knowledge of the requirements of this chapter and must prove by actual demonstration that the applicant is competent and qualified to perform each type of sampling and testing listed on the application. The commissioner shall issue a license which states the types of sampling, hauling, or testing for which the applicant is qualified. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee, after receiving additional training and passing the required examinations. Examinations must be given by the department at times and places as the department shall determine. A licensee is not required to take additional examinations when renewing a license unless required by the commissioner. All testers and samplers shall attend a training session sponsored by the department every two years. Retraining or retesting or both may be required when the commissioner reasonably determines it to be necessary. Licenses issued under this section expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The annual license fee is ten dollars. A five dollar penalty fee is applied if renewals are not paid by January thirty-first.

4.1-25-23. Commissioner to investigate complaint.

The commissioner shall investigate any complaint claiming any provision of this chapter or the rules of the commissioner have been violated. If the commissioner finds a provision of this chapter or the rules of the commissioner have been violated, the commissioner may take any action deemed appropriate.

4.1-25-24. Inspections.

Upon notification, the commissioner shall have free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The commissioner may open and inspect any container suspected of containing a substance produced, stored, handled, processed, manufactured, transported, sold, or offered for sale under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections of any dairy facilities licensed under this chapter. The commissioner may suspend a license for failure to comply with this section.

4.1-25-25. Suspension or revocation of license - Judicial review - Emergency order.

Any proceedings under this chapter for the suspension or revocation of a license, or to determine compliance with this chapter or the rules and orders of the commissioner, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be made as provided. When an emergency exists requiring immediate action to protect the public health and safety, without notice or hearing, the commissioner may issue an order reciting the existence of the emergency and requiring action be taken to protect the public health and safety. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

4.1-25-26. Sampling and testing procedures - Equipment - Supplies.

The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to those described in the Standard Methods, a copy of which must be kept on file in the department. Any equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products not conforming to the requirements of this chapter may not be sold or offered for sale. The commissioner, through the adoption of rules, may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, when appropriate, may check calibration of farm bulk milk tanks and equipment.

4.1-25-27. Sampling of milk.

Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the Standard Methods. Records must be kept, which readily identify the sample, with those items used to determine payment for the milk. Those items must include weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

4.1-25-28. Standards for the production of manufacturing grade milk - Minimum standards of rules.

At a minimum, rules governing the production and processing of milk for manufactured dairy products must comply with United States department of agriculture minimum standards for manufacturing grade dairy products.

4.1-25-29. Standards for dairy manufacturing or processing - Minimum standards of rules.

At a minimum, rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products must comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products. A plant may not be operated or any dairy products sold in violation of these rules.

4.1-25-30. Standards for grade A milk and milk products - Adoption of rules.

Only grade A milk may be sold as a fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the Pasteurized Milk Ordinance which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO". The commissioner may adopt rules imposing other standards in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, saleability, and promotion of grade A milk and milk products.

4.1-25-31. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - 2015 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

4.1-25-32. Milk laboratory evaluations officer - Duties - Guidelines.

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service food and drug administration publication entitled "Evaluation of Milk Laboratories - 2015 Edition".

4.1-25-33. Grade A Pasteurized Milk Ordinance.

Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk Ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2015 Revision".

4.1-25-34. Quality records to be kept - Term.

Adequate records for testing and grading in conformance with this chapter and the rules of the commissioner must be kept by each business sampling or testing milk for at least twelve months in a manner approved by the commissioner.

4.1-25-35. Milk haulers - License required - Commissioner to adopt rules.

A person may not own or operate any tank truck, bulk milk truck, or other vehicle used or designed to carry bulk raw milk without a license issued by the department. The commissioner shall adopt rules governing the operation, inspection, design, and licensure of such persons. The license of any person operating a vehicle in violation of this section or the rules of the commissioner is subject to revocation or suspension in accordance with procedure established by law. A license to haul milk issued under this section may be issued in conjunction with or as part of any license to sample or test milk or milk products issued pursuant to section 4.1-25-22.

4.1-25-36. Adulterated, impure, or unwholesome milk or milk products not to be transported, stored, sold, or offered for sale.

Any milk or milk products produced or kept under unclean or unsanitary conditions or; produced from animals that are diseased or fed unwholesome, impure, or toxic feed; or milk that tastes from colostrum, must be deemed impure and unwholesome. Milk or milk product that is deemed to be adulterated, impure, or unwholesome may not be transported, stored, sold, or offered for sale in this state.

4.1-25-37. Sale of milk or milk products in violation of this chapter prohibited.

A person may not sell, or offer for sale, any milk or milk product, their imitations or substitutes, that is produced, processed, manufactured, transported, or stored, in violation of the laws of this state or the rules of the commissioner, or which do not subscribe to the definition as stated in this chapter or defined by the commissioner.

4.1-25-38. Exception for uses as directed by physicians.

This chapter does not prohibit the manufacture or sale of filled dairy products or imitation milk and imitation milk products when those products are prominently labeled to show their composition and the fact the products are sold customarily for use as directed by order of a physician and are prepared and designed for medicinal or special dietary use.

4.1-25-39. Sale of foods not imitation milk, imitation milk products, or filled dairy products.

This chapter does not prohibit the manufacture or sale of proprietary foods that are clearly not imitation milk, imitation milk products, or filled dairy products; which do not contain imitation milk, imitation milk product, or filled dairy product; and which are not conducive to substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled dairy products by their manufacture or sale.

4.1-25-40. Shared animal ownership agreement - Raw milk.

It is not a violation of this chapter to transfer or obtain raw milk under a shared animal ownership agreement. A person may not resell raw milk or raw milk products obtained under a shared animal ownership agreement.

4.1-25-41. Labeling and identity standards.

A person who sells milk or milk products at retail in the state shall comply with the labeling standards and standards of identity set forth in 21 U.S.C. 343(q)(r) and in rules adopted by the commissioner.

4.1-25-42. Reports - Blanks - When made - Contents.

The commissioner shall furnish blanks to all licensed creameries, cheese factories, condenseries, drying plants, ice cream plants, ice milk plants, milk plants, and producer-distributors for the purpose of making a report of the amount of milk and milk products handled. Each proprietor or manager of those businesses shall report to the commissioner on the last days of June and of December of each year, or immediately upon cessation of operation, the pounds [kilograms] of butterfat in cream, the pounds [kilograms] of manufacturing grade milk, and the pounds [kilograms] of bottling milk purchased during the period covered by the report, the aggregate amount paid for each, the number of pounds [kilograms] of butter and cheese, and the number of gallons [liters] of ice cream and ice milk manufactured during such period.

4.1-25-43. Test results disputes.

If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk sold or offered for sale at the request of the owner and in the owner's presence, a sample of the milk obtained as provided in section 4.1-25-27 and mutually agreed upon by the interested parties as being a representative sample must be sealed and mailed by the buyer to the office of the commissioner. Each sample mailed to the commissioner must include a statement giving the name and address of the seller and the buyer of the milk in question, the net weight, the percentage and amount of butterfat contained, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner shall determine the percentage of butterfat contained in the sample and shall report of the result in triplicate, the original to be filed in the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk. The percentage of butterfat determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the official butterfat test and any other tests required must be in an amount as set by rule of the commissioner, considering the actual costs of the test, and the fee must be mailed to the commissioner at the time of forwarding the sample for the official butterfat or other test.

4.1-25-44. Test sample disputes.

If the buyer and seller do not agree upon a sample of milk as provided in section 4.1-25-43, the party selling or offering for sale that milk may require that the buyer or prospective buyer to forward the sample taken to the department in compliance with section 4.1-25-27. Each sample so forwarded must include an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of section 4.1-25-27, and the statement must contain all information required in section 4.1-25-43, except that the signature of the seller is not required. Each sample must be tested and reported on as prescribed in section 4.1-25-43, and the percentage of butterfat determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

4.1-25-45. Standards considered minimum - Municipality may provide more stringent standards.

The standards in this chapter constitute only minimum standards. This chapter may not be construed to prevent any municipality from providing, by ordinance, more stringent or comprehensive standards than are contained within this chapter. Neither this chapter nor in the rules of the commissioner may be construed to prevent any

person concerned with the dairy business from using standards, inspections, or other practices or procedures that are more stringent or comprehensive.

4.1-25-46. Fees and penalties collected to be placed in general fund.

All fees and penalties collected under this chapter must be deposited with the state treasurer and credited to the general fund.

4.1-25-47. Disposal of illegal milk or milk products - Seizure.

Any milk or cream offered for sale in violation of any provision of this chapter or the rules of the commissioner must be colored with a harmless food coloring and returned to the seller. In addition, any milk or milk product that is in violation of any provision of this chapter or the rules of the commissioner may be seized or ordered held by the commissioner and must be disposed of as any other illegal food or drug as provided in chapter 19-02.1.

4.1-25-48. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty.

A person violating any provision of this chapter or any rule or order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32. If a civil penalty is imposed by the commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The commissioner may suspend or revoke a license issued under this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed. The commissioner may refuse to renew or issue a license if the licensee or license applicant has repeatedly violated the provisions of this chapter or rules or orders of the commissioner.

4.1-25-49. State's attorney's endorsement to complaint unnecessary upon violation of chapter.

A complaint made for a violation of this chapter does not require the endorsement of the state's attorney, but when the court hearing a complaint made is satisfied of the truthfulness of the complaint, the court shall issue a warrant.

4.1-25-50. Rules.

The commissioner may adopt rules under chapter 28-32 to implement this chapter.

4.1-25-51. Shared animal ownership agreement rules limitation.

Notwithstanding chapter 28-32, the commissioner may not adopt any rule that restricts, limits, or imposes additional requirements on any person transferring or obtaining raw milk in accordance with the terms of a shared animal ownership agreement.

4.1-25-52. Enforcement.

The commissioner shall administer and supervise the enforcement of this chapter, provide for periodic inspections and investigations deemed necessary to ensure compliance with this chapter or the rules under this chapter, receive and provide for

the investigation of complaints; and provide for the institution and prosecution of civil or criminal actions or both. This chapter and the rules under this chapter may be enforced by injunction in any court having jurisdiction to grant injunctive relief. Filled dairy products, imitation milk, or imitation milk products, illegally held or otherwise in violation of this chapter may be seized and disposed under an appropriate court order.

SECTION 2. Chapter 4.1-27 of the North Dakota Century Code is created and enacted as follows:

4.1-27-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the agriculture commissioner.
2. "Livestock" means horses, mules, asses, bison, cattle, swine, sheep, farmed elk, and goats.
3. "Livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market or a private buying station, consisting of pens or other enclosures and their appurtenances; in which livestock is received, held, or kept for sale; and where that livestock is sold or offered for sale, at either public auction or private sale.

4.1-27-02. Premises excluded from application of chapter.

The provisions of this chapter do not apply to:

1. Any place used solely for the dispersal sale of the livestock of a farmer, dairy producer, livestock breeder, or feeder who is discontinuing the person's business.
2. The premises of any butcher, packer, or processor who receives animals exclusively for immediate slaughter.
3. Any place where any individual or duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under the individual's or association's management registered livestock or breeding sires owned by the individual or members of the association if the individual or association:
 - a. Assumes all responsibility of the sale;
 - b. Guarantees title of the livestock; and
 - c. Makes proper provision for the inspection of all animals sold.
4. Any place where a duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under its management, at an annual production sale not exceeding twenty-one calendar days, livestock raised or held for at least one year by producers affiliated with the association, if the association:
 - a. Assumes all responsibility of the sale;

- b. Guarantees title of the livestock; and
- c. Makes proper provision for the inspection of all animals sold.

4.1-27-03. License requirements - Application - Fee - Commission schedule - Facilities.

A person may not establish or operate a livestock auction market within this state without procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the state veterinarian. An applicant for a license shall:

1. Make a written application in the form prescribed by the commissioner;
2. File evidence required by the state board of animal health or the commissioner to show the person is financially responsible to operate an auction market and the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock;
3. Pay to the commissioner a license fee of two hundred dollars;
4. File with the commissioner a schedule of fees and commissions that will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. The schedule may not be altered except upon notification to the commissioner. The altered schedule must be reposted upon notification to the commissioner;
5. State the location where the applicant proposes to operate a livestock auction market;
6. Make a complete and detailed description of the property and facilities proposed to be used in connection with the livestock auction market; and
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

4.1-27-04. Bond to accompany application for license - Amount - Approval - Conditions - Exemptions.

1. An applicant for a license to operate a livestock auction market shall file a surety bond of at least ten thousand dollars with the application for license or renewal of a license. The bond must be approved by the commissioner as to the amount, form, and surety. The commissioner must be named the obligee in the bond. The bond must be for the benefit of, and for the purpose of protecting, any person selling to or through the licensed livestock auction market, or buying livestock through or from the licensed livestock auction market or the licensee's agent. The commissioner may require an additional bond of the licensee when the commissioner deems the volume of the business of the licensee warrants the additional bond. The bond must be conditioned for:
 - a. The payment of all money received by the licensee and the operator of the livestock auction market, less reasonable expenses and agreed commissions;

- b. The faithful performance by the licensee of the duties of a livestock auction market operator; and
 - c. The faithful performance by the licensee of all duties imposed by law relating to the purchase, sale, or holding of livestock.
2. The bond must cover the entire license period. If the commissioner is the trustee or obligee of a surety bond in which the auction market operator is the principal and is operating and is bonded under the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.], the commissioner may accept that bond in lieu of the one required under this section, except that the minimum bond requirements of ten thousand dollars will be continued.

4.1-27-05. Records release required with application for licensure.

A livestock auction market shall file with the license application a release in a form approved by the commissioner authorizing the commissioner to access financial records of the livestock auction market held by financial institutions, accountants, and other sources. The commissioner may use the release in the course of licensing or relicensing a livestock auction market or in the course of an investigation of a livestock auction market. Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

4.1-27-06. Expiration and renewal of license - Fee returned upon failure to issue or renew license.

Each license issued under this chapter expires on the thirty-first day of March following the date of issuance. Each license must be renewed annually on or before March thirty-first. The fee for a renewal license is the same as for an original license. If the commissioner does not issue a requested original license or renewal license, the fee paid must be refunded to the applicant.

4.1-27-07. Investigation of auction market - Hearing to determine whether license should be issued or revoked.

1. The commissioner, upon the commissioner's own motion or upon a complaint by any person, may enter an investigation of the sales and transactions of any livestock auction market and of the conditions under which the business of the livestock auction market is conducted. The commissioner may conduct a hearing to determine whether the license of any auction market should be revoked or whether the application of the owner or operator of a livestock auction market for an original or renewal license should be denied.
2. The commissioner shall conduct an investigation of an alleged violation of this chapter when:
 - a. A complaint, allegation, or order to show cause, alleging an act which would constitute a violation of this chapter, is filed by the packers and stockyards administration of the United States;
 - b. The commissioner has information sufficient to form a reasonable belief that a violation of this chapter has occurred; or

- c. The commissioner has received a sworn statement, affidavit, or other evidence from any person alleging a violation of this chapter.
3. The commissioner shall conduct a hearing to determine whether a violation has occurred when, pursuant to an investigation, probable cause exists that a violation of this chapter has occurred.
4. The commissioner shall conduct an audit, or cause an audit to be conducted, when probable cause exists that any livestock auction market has violated any of the financial provisions of this chapter, when it reasonably appears that the liabilities of the livestock auction market exceed its assets, or when the auction market has refused to pay a proper claim without reasonable cause.

4.1-27-08. Cease and desist authority.

The commissioner may issue an order to cease and desist when, in the opinion of the commissioner, any auction market within the state is taking or planning any action which is or may be in violation of this chapter. If an order is granted, the commissioner shall conduct a hearing within thirty days of the issuance of the order to determine whether the actions of the person named in the order violated or would have violated this chapter. After the hearing, but not later than forty-five days after the issuance of the order, the commissioner shall revoke the order or make it permanent, as determined by the evidence.

4.1-27-09. Injunctive authority.

The commissioner may seek an order from the district court of Burleigh County to enjoin a prohibited act when the commissioner believes any auction market or person is violating this chapter or is pursuing a course of action which may lead to a violation of this chapter.

4.1-27-10. Sanitary regulations of livestock auction market.

Each livestock auction market must be maintained in a sanitary condition in accordance with this chapter. Any portion of a livestock auction market used for the handling of hogs, including all hogpens, alleys, and auction markets, must be equipped with concrete floors at least three inches [7.62 centimeters] thick. The concrete floors must be cleaned and disinfected after each sale, or in case of a continuous sale, not less than once each week or as may be prescribed by the state board of animal health.

4.1-27-11. Scales maintained by auction market to be inspected.

All scales used in the operation of a livestock auction market must be tested and inspected by the department of weights and measures as provided by law. All livestock sold by weight must be weighed on such scales, and the purchaser and seller of the livestock must be furnished with a true and correct statement of the weight.

4.1-27-12. Records to be kept by operator of auction market - Contents - Examination - Report.

1. The operator of each livestock auction market shall keep on file an accurate record of the following:
 - a. The date on which each consignment of animals was received and sold:

- b. The name and address of the buyer and seller of the consigned animals;
 - c. The number and species of the animals received and sold; and
 - d. The marks and brands on each such animal.
2. The records, together with the gross selling price, commission, and other proper care, handling, and sales charges on each consignment of livestock must be available for inspection by the commissioner, or authorized inspectors. A copy of the information required in this section must be supplied to the owner of the livestock. All records of sales during the preceding twelve months must be kept readily accessible for immediate examination by the commissioner.

4.1-27-13. Notice - Nonsufficient funds checks.

A livestock auction market that receives a check for the sale of livestock which is returned unpaid with a notation that the payment has been refused because of nonsufficient funds shall notify the commissioner within two business days after receipt of the returned check.

4.1-27-14. Inspection of livestock - Fees and rules governing.

Before it is offered for sale, each animal that enters a livestock auction market must be inspected for health by a veterinarian licensed in this state and approved by the state board of animal health. Cattle also must be inspected for brands by a trained brand inspector, acting under rules adopted by the North Dakota stockmen's association and the state board of animal health. Veterinary inspection must include all livestock, whether it is to be moved interstate or intrastate. The veterinary inspector must be recommended by the livestock auction market and approved by the state board of animal health. The veterinarian must be a local veterinarian or a veterinarian of the vicinity, unless there is no such veterinarian available. If the livestock auction agency fails to recommend a veterinarian within a reasonable time, the board may approve a veterinarian, if qualified and willing to accept the position at the market, and provide notice to the market agency of the appointment. The services and duties of the veterinary inspector are under the supervision of the state board of animal health and the inspector must be relieved of office when the inspector fails to perform the required services and duties. Fees for the inspection must be paid to the veterinarian by the livestock auction market company and must be in an amount agreed upon by the auction market company and the veterinarian.

4.1-27-15. Livestock unfit for sale.

1. Livestock may not be offered for sale or sold at any licensed public livestock auction market if the livestock has a condition including the following:
 - a. Is infected with a disease that permanently renders the livestock unfit for human consumption;
 - b. Has severe neoplasia;
 - c. Has severe actinomycosis;
 - d. Is unable to rise to its feet by itself; or

- e. Has a fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without the limb collapsing.
2. If, in the judgment of a veterinarian licensed in this state and approved by the state board of animal health, the livestock consigned and delivered to the premises of a livestock auction market is affected by any of the conditions described above, the veterinarian shall humanely euthanize the livestock or direct the consignor to immediately remove the livestock from the premises of the livestock auction market. All expenses incurred for euthanasia and disposal of the livestock under this section are the responsibility of the consignor. Collection of expenses is not the responsibility of the consignee.

4.1-27-16. Treatment administered to livestock before removal from auction market - Fees for inspection and treatment.

An operator of a livestock auction market may not permit the removal of any livestock from the establishment until the livestock has been treated in accordance with the rules adopted by the state board of animal health. If livestock is destined to be shipped interstate, the authorized veterinarian of the board shall furnish to each purchaser a certificate showing that inspection has been made and treatment administered in accordance with the requirements of the state of destination. All fees for veterinary inspection, treatment, and services, including brand inspection, must be collected by the operator of the livestock auction market and paid to the inspector.

4.1-27-17. Grievance committee.

1. Any livestock auction market who has a complaint against the veterinarian assigned to the livestock auction market, or any veterinarian that has a complaint against the auction market to which the veterinarian is assigned, may submit a written complaint to the grievance committee. The grievance committee consists of:
 - a. The president of the North Dakota stockmen's association or the president's designee;
 - b. The president of the livestock auction market association or the president's designee; and
 - c. The president of the North Dakota veterinary medical association or the president's designee.
2. The members of the committee shall choose one member to serve as chairman. The committee shall meet at the call of the chairman. The committee shall take all complaints under consideration and report a recommendation of the committee to the state board of animal health within thirty days after receipt of the complaint.

4.1-27-18. Operator to warrant title to purchaser - Dispute in title of animal sold.

The operator of each livestock auction market shall warrant to the purchaser the title of all livestock bought by the purchaser through the auction market and the operator is liable to the rightful owner of any livestock sold through the auction market for the net proceeds in cash received for the livestock. If the operator of an auction market is notified by an authorized brand inspector that there is a question as to

whether any designated livestock sold through the auction market is lawfully owned by the consignor of the livestock, the operator shall hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed sixty days, to permit the consignor to establish ownership. At the expiration of the allotted time, if the consignor fails to establish lawful ownership of the livestock to the satisfaction of the brand inspector, the proceeds must be remitted to the state treasurer for deposit in the North Dakota stockmen's association fund.

4.1-27-19. Use of fees - Grounds for refusal or revocation of license - Procedure on default of licensee.

All fees collected by the commissioner under this chapter must be credited to the general fund of the state treasury. A license to operate a livestock auction market may be refused or revoked for any of the reasons specified in sections 4.1-83-10, 4.1-83-19, 4.1-88-09, or 4.1-88-18. When the holder of a license issued under this chapter defaults in any of the conditions of any bond filed with the commissioner by the licensee, the commissioner will become trustee of the bond and sections 4.1-83-21 through 4.1-83-28 and 4.1-88-20 through 4.1-88-27 govern the procedure to be followed.

4.1-27-20. Review by the court.

The action of the commissioner in denying an application for a license or in revoking or suspending a license may be appealed to the district court of Burleigh County by the procedure applicable to appeals taken in the manner provided in chapter 28-32, except the commissioner's order revoking or suspending the license may be stayed by the court appealed to upon filing with the clerk of the court a bond approved by and in the amount set by the judge of the district court for the faithful observance of the laws of the state relative to the operation of the business licensed during the pendency of the appeal.

4.1-27-21. Unlawful acts.

It is a violation of this chapter for any livestock auction market or person to:

1. Make or cause any false entry or statement of fact to be made in any application, financial statement, or report filed with the department under this chapter;
2. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse to allow any authorized agent of the department to have access, during reasonable hours, to inspect and to copy any or all of the records relating to the dealer's business;
3. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 4.1-27-13;
5. Fail to pay brand inspection fees or veterinarian fees as required by law;
6. Fail to collect beef promotion assessments pursuant to chapter 4.1-03; or
7. Fail to pay for livestock purchased, including the issuance of a check or payment for livestock purchased, when the check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

4.1-27-22. Penalties - Criminal - Civil.

1. Any auction market or person who willfully violates any provision of this chapter is guilty of a class A misdemeanor.
2. Any auction market or person who willfully violates any provision of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.

4.1-27-23. Public livestock markets or commission firms - Duplicate scale tickets.

All public livestock markets or commission firms doing business in this state shall deliver to each person consigning livestock to the market or purchasing livestock from the market a duplicate scale ticket showing the weight of such livestock.

SECTION 3. Chapter 4.1-28 of the North Dakota Century Code is created and enacted as follows:

4.1-28-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Internet livestock auction" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility or website within or outside the state through the use of the internet.
3. "Livestock" means horses, mules, cattle, swine, sheep, farmed elk, and goats.
4. "Representative" means a dealer licensed under chapter 4.1-83 or a livestock auction market licensed under chapter 4.1-27.
5. "Video livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility within or outside the state through the use of video at a public auction.

4.1-28-02. Video livestock auction market and internet auction - Authority to transact business.

A video livestock auction market or internet livestock auction market may not transact business in this state unless the market transacts business through a representative licensed under this chapter.

4.1-28-03. Application for license - Contents.

1. Before entering business with a video livestock auction market or internet livestock auction market, each representative must obtain a license to transact business with a video livestock auction market or internet livestock auction market by filing an application with the commissioner on a form prescribed by the commissioner. A license issued under this section expires June thirtieth after issuance and must be renewed by filing of a renewal application at the

time and on a form prescribed by the commissioner. The application must show:

- a. The nature of the business applying for a license:
 - b. The name of the representative applying for the license on behalf of the business:
 - c. The name and address of the video livestock auction market or internet livestock auction market through which the applicant proposes to transact business; and
 - d. Any other information the commissioner may require.
2. The application for a license or for a renewal of a license must include:
- a. A license fee of one hundred dollars:
 - b. Evidence the commissioner may require showing the video livestock auction market or internet livestock auction market the representative proposes to do business through is financially responsible and bonded to transact such business:
 - c. A schedule of the fees and commissions that will be charged to owners, sellers, or their agents; and
 - d. A copy of the contract between the representative and the video livestock auction market or internet livestock auction market through which the representative proposes to transact business. The contract must:
 - (1) Contain a provision authorizing the commissioner to have access to the books; papers; accounts; financial records held by financial institutions, accountants, or other sources;
 - (2) Contain other documents, as determined by the commissioner, relating to the activities of the video livestock auction market or internet livestock auction market; and
 - (3) Provide that the video livestock auction market or internet livestock auction market and its representative are jointly and severally liable, with the right of contribution, for all business transacted within this state by the representative on behalf of the video livestock auction market or internet livestock auction market.
3. If the contract between the representative and the video livestock auction market or internet livestock auction market is terminated, rescinded, breached, or otherwise materially altered, the representative and the video livestock auction market or internet livestock auction market shall immediately notify the commissioner. Failure to notify the commissioner of termination, rescission, breach, or material alteration of the contract between the representative and the video livestock auction market or internet livestock auction market is deemed to be a failure to keep and maintain suitable records with the department and is deemed to be a false entry or statement of fact in an application filed with the department.

4.1-28-04. Use of fees - Grounds for refusal or revocation of license - Review by court.

All fees collected by the commissioner under this chapter must be deposited in the general fund of the state treasury. A license may be refused or revoked for any reason specified in subdivision c or d of subsection 2 of section 4.1-83-10 or section 4.1-83-15, or if the contract required by this chapter between the representative and the video livestock auction market or internet livestock auction market is extinguished, rescinded, or canceled, or is breached by either party. The action of the commissioner in denying an application for a license or revoking or suspending a license may be appealed as provided in section 4.1-27-20.

4.1-28-05. Inspection of livestock.

Before any livestock sold pursuant to this chapter is delivered, whether interstate or intrastate, the livestock must be inspected for health by a veterinarian licensed in this state and approved by the state board of animal health and, in the case of cattle, for brands by a trained brand inspector, acting under rules adopted by the North Dakota stockmen's association and the state board of animal health. The inspection must take place at the time of the initial delivery of the livestock. If livestock is destined to be shipped interstate, the authorized veterinarian shall furnish to each purchaser a certificate showing that the inspection has been made and treatment administered in accordance with the requirements of the state of destination. The services and duties of the veterinary inspector are under the supervision of the state board of animal health. Fees for the veterinary inspection must be an amount agreed upon by the representative and the veterinarian. All fees for veterinary inspection, treatment, and services must be collected by the representative and paid to the inspector.

4.1-28-06. Method of payment.

Payment to the seller for livestock sold through a video livestock auction market or internet livestock auction market must be made in United States currency, with an instrument payable on demand drawn on a financial institution chartered and regulated by a state or the federal government, or by wire transfer or other electronic form of payment from a financial institution chartered and regulated by a state or the federal government.

4.1-28-07. Sale of livestock by weight - Scales to be inspected.

Notwithstanding section 36-21-15, all livestock sold by weight through a video livestock auction market or internet livestock auction market must be sold based on the weight of the livestock on the day of delivery. All livestock sold by weight must be weighed on scales that have been tested and inspected by the department of weights and measures in the manner provided by law.

SECTION 4. Chapter 4.1-30 of the North Dakota Century Code is created and enacted as follows:

4.1-30-01. Packing plant defined.

The term "packing plant" as used in this chapter means a place where livestock, exclusive of poultry, is purchased for the purpose of slaughtering, dressing, curing, or processing the same for storage and distribution at wholesale for human consumption.

4.1-30-02. Livestock purchased by weight to be graded - Penalty.

An officer or employee of a packing plant within this state may not purchase any livestock by weight unless such livestock has been graded and sorted in the yard and the price per pound [.45 kilogram] for each grade fixed and determined before the livestock is weighed. Any officer or employee of a packing plant who violates this section is guilty of an infraction.

4.1-30-03. Penalty for purchase of livestock by weight without grading.

Each purchase of livestock in violation of section 4.1-30-02 is a separate offense and constitutes an infraction upon the part of every owner of a packing plant in which such violation occurs.

SECTION 5. Chapter 4.1-31 of the North Dakota Century Code is created and enacted as follows:

4.1-31-01. Definitions.

1. "Adulterated" means a carcass or meat food product:
 - a. That includes a poisonous or harmful substance that may render it injurious to health;
 - b. That includes a chemical pesticide that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - c. That includes a food or color additive that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - d. That includes a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
 - e. That has been prepared, packed, or held under unsanitary conditions;
 - f. That includes the product of an animal that has died in a manner other than slaughter or includes the product of an animal condemned by reason of disease that existed at the time of slaughter;
 - g. The container of which includes a poisonous or harmful substance that may make the contents harmful to health;
 - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - i. That is damaged or inferior and that damage or inferiority has been concealed; or
 - j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better or of greater value than it is.
2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses, equines, bison, other large domesticated animals, and poultry.

3. "Carcass" includes all or any part of an animal carcass.
4. "Container" means a receptacle of a meat food product.
5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal carcass or meat food products for the owner of the animal carcass or the meat food products, if all meat food products derived from the custom processing are returned to that owner.
6. "Inspector" means an inspector appointed by the commissioner to perform duties under this chapter.
7. "Intrastate commerce" means commerce within this state.
8. "Meat food product" means a product usable as human food which contains any part of an animal carcass. The term does not include any product that contains any part of an animal carcass in a relatively small proportion or which historically has not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
9. "Poultry" includes domesticated fowl bred for the primary purpose of producing eggs or meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.
10. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

4.1-31-02. Inspectors - Appointments - Duties.

1. The commissioner shall appoint inspectors to examine and inspect meat food products prepared solely for intrastate commerce in a slaughtering, meat canning, salting, packing, or similar establishment. The inspections must take place at any time during which the slaughtering of animals or the preparation of meat food products is being conducted. Upon completing an inspection, the inspector shall mark, stamp, tag, or label the product "North Dakota inspected and passed" if it is unadulterated or as "North Dakota inspected and condemned" if the product is found to be adulterated.
2. The commissioner shall appoint inspectors to examine and inspect each slaughtering, meat canning, salting, packing, or similar establishment in which meat food products are prepared solely for intrastate commerce. The commissioner shall adopt rules of sanitation applicable to these establishments. The commissioner may not allow any meat food product from any facility not meeting the sanitary conditions required by those rules to be labeled, marked, stamped, or tagged as "North Dakota inspected and passed".
3. Meat food products inspected and passed under this chapter may be sold at retail in this state.
4. Neither the commissioner, nor any inspector appointed by the commissioner, may undertake any activity that is duplicative of an activity performed by meat inspectors of the United States department of agriculture.

4.1-31-03. Access by inspectors - Penalty.

1. For purposes of enforcement of this chapter, the commissioner may enter and inspect:
 - a. Any place where food or any other product, the manufacture, sale, use, or transportation of which is restricted, regulated, or prohibited by a law of this state, is or may be manufactured, prepared, stored, sold, used, transported, offered for sale or transportation, or possessed with intent to use, sell, or transport;
 - b. Any place where an animal is pastured or stabled;
 - c. Any vehicle used to transport a meat food product or an animal;
 - d. Any place where food is or may be cooked, prepared, sold, or kept for sale to or for the public or distributed as a part of the compensation of an employee or agent; and
 - e. Any place where a meat food product may be manufactured, sold, used, offered for sale or transportation, or possessed with intent to use, sell, or transport.
2. The commissioner may inspect any container believed to hold food, a food ingredient, or some other product, the manufacture, use, sale, or transportation of which is restricted, regulated, or forbidden by state law, and may take samples from it for analysis.
3. It is a class A misdemeanor for any person to obstruct entry or inspection under this chapter or to fail, upon request, to assist in an inspection authorized by this chapter.

4.1-31-04. Marks and labels.

1. If a meat food product that is inspected and marked "North Dakota inspected and passed" is being placed or packed in a container, the person preparing the product shall attach to the container, under supervision of an inspector, a label indicating that the product has been "North Dakota inspected and passed". An inspection under this chapter is not complete until the product has been sealed or enclosed in the container, under the supervision of an inspector.
2. A meat food product inspected under this chapter and found not to be adulterated must bear, directly or on its container, a legible label or official mark as required by the commissioner.
3. The commissioner shall prescribe by rule the style and size of type to be used in labeling meat under this chapter and standards of identity, composition, and fill of container for meat food products inspected under this chapter, but the standards must be consistent with those established under federal law.

4.1-31-05. False or misleading marks, labels, and containers.

A person may not sell in intrastate commerce any meat food product subject to inspection under this chapter under a name, mark, or label that is false or misleading, or in a container of a misleading form or size. If the commissioner has reason to

believe that a mark, label, or container is false or misleading, the commissioner may direct that its use be withheld unless the mark, label, or container is modified in a manner approved by the commissioner. If the person using or proposing to use the mark, label, or container does not accept the determination of the commissioner, the person may request a hearing. The commissioner may direct that the mark, label, or container not be used pending a hearing and final determination by the commissioner. A determination by the commissioner is conclusive unless the person adversely affected appeals to the district court within thirty days after receiving the notice of final determination.

4.1-31-06. Prohibitions.

A person may not:

1. Slaughter an animal or prepare an article usable as human food at any establishment preparing articles solely for intrastate commerce, unless the person complies with this chapter;
2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce any article that is usable as human food and which is adulterated or misbranded or any article that has not been inspected and passed under this chapter; or
3. Alter an article that is usable as human food while the article is being transported in intrastate commerce or held for sale after transportation, if the alteration is intended to cause or has the effect of causing the article to be adulterated or misbranded.

4.1-31-07. Official marks and certificates - Required authorization.

A person may not:

1. Cast, print, or otherwise make a device containing an official mark, simulation of an official mark, label bearing a mark or simulation, or form of official certificate or simulation, without authorization from the commissioner;
2. Forge an official device, mark, or certificate;
3. Use a real or simulated official device, mark, or certificate, or alter, detach, deface, or destroy an official device, mark, or certificate, without authorization from the commissioner;
4. Fail to use an official device, mark, or certificate if appropriate;
5. Knowingly possess, without promptly notifying the commissioner, a counterfeit, simulated, forged, or improperly altered official certificate, device, or label, or a carcass bearing a counterfeit, simulated, forged, or improperly altered official mark;
6. Knowingly make a false statement in a certificate; or
7. Knowingly represent falsely that an article has been inspected and passed, or exempted, under this chapter.

4.1-31-08. Horse meat - Requirements.

A person may not sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce carcasses of horses, mules, or other equines or meat food products derived from them, unless they are plainly and conspicuously marked, labeled, or otherwise identified to show the kinds of animals from which they were derived. The commissioner by rule may require that the preparation of equine carcasses and equine meat food products take place in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or in which their carcasses or meat food products are prepared.

4.1-31-09. Bribery.

A person may not give or receive anything of value to influence the performance of an inspector under this chapter.

4.1-31-10. Individual and custom processing - Exemption from inspection requirements.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the carcasses and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. The provisions of this chapter requiring inspection of the slaughter of animals, the preparation of the carcasses and meat and meat food products at establishments conducting those operations do not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the carcasses and meat food products of the animals, provided the products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.
3. A custom processor may not engage in the business of buying or selling carcasses or meat food products of animals, other than poultry, usable as human food unless the carcasses or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.
4. The provisions of this chapter requiring inspection of the preparation of poultry carcasses and poultry food products at establishments conducting those operations do not apply to any retailer with respect to poultry products sold in commerce directly to consumers in an individual retail store, provided the retailer does not engage in the business of custom slaughter, and provided the poultry products sold in commerce are derived from poultry inspected and passed by the commissioner or the United States department of agriculture.

4.1-31-11. Storing and handling conditions.

The commissioner shall adopt rules regarding the manner in which all carcasses and meat food products of animals usable as human food and subject to this chapter must be stored, handled, and transported.

4.1-31-12. Articles not intended as human food.

The commissioner may not provide inspection under this chapter at an establishment for the slaughter of animals or the preparation of carcasses or parts or products of animals which are not intended for use as human food. Before these articles are offered for sale or transportation in intrastate commerce, the articles must be denatured or otherwise identified, as prescribed by rules of the commissioner, to deter the articles use for human food, unless the articles are naturally inedible by humans. A person may not buy, sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses or meat food products of animals which are not intended for use as human food, unless the articles are denatured or otherwise identified.

4.1-31-13. Records.

The following persons shall keep records that fully and accurately disclose the transactions described:

1. A person in the business of slaughtering animals or preparing, freezing, packaging, or labeling animal carcasses or products of carcasses for use as human or animal food.
2. A person buying, selling, transporting, or storing animal carcasses or products of animal carcasses.
3. A person rendering or buying, selling, or transporting dead, dying, disabled, or diseased animals or the carcasses of animals that died other than by slaughter.

4.1-31-14. Records - Examination.

Upon notice by the commissioner, any person subject to the recordkeeping requirements of this chapter shall give the commissioner and the United States department of agriculture access to the person's place of business at all reasonable times and an opportunity to examine the facilities, inventory, and records of the business, to copy business records, and to take reasonable samples of the person's inventory upon payment of the fair market value of the samples.

4.1-31-15. Records - Retention.

Any person subject to the recordkeeping requirements of this chapter shall maintain the records for the period prescribed by the commissioner.

4.1-31-16. Registration of business.

A person may not engage in intrastate business as a meat broker, renderer, or animal food manufacturer; a wholesaler of animal carcasses intended for human food or other purposes; a public warehouse operator storing carcasses of animals in or for intrastate commerce; or a buyer, seller, or transporter of dead, dying, disabled, or diseased animals, or the carcasses of animals that died other than by slaughter, unless the person first provides the commissioner with the person's name, the address of each place of business under which the person conducts business, and all trade names under which the person conducts business.

4.1-31-17. Dead, dying, disabled, or diseased animals - Rules.

The commissioner shall adopt rules to ensure dead, dying, disabled, or diseased animals are not used as human food.

4.1-31-18. Cooperation with federal government.

The commissioner shall cooperate with the United States department of agriculture to develop and administer the state meat inspection program provided for under this chapter and to ensure its requirements are at least equal to those imposed by federal law. The commissioner may accept, from the United States department of agriculture, advice and assistance in planning and otherwise developing the state meat inspection program; technical and laboratory assistance and training, including necessary curricular and instructional materials and equipment; and financial and other assistance for the administration of the program.

4.1-31-19. Refusal or withdrawal of inspection.

1. For the length of time the commissioner considers necessary to carry out the purposes of this chapter, the commissioner may refuse to provide, or may withdraw, inspection services from an establishment if after a hearing the commissioner determines that the recipient or potential recipient is unfit to engage in any business requiring inspection under this chapter because the recipient, potential recipient, or anyone responsibly connected with the recipient or potential recipient has been convicted of:
 - a. An offense determined by the commissioner to have a direct bearing on the person's ability to serve the public in a business requiring inspection under this chapter, or the commissioner determines the person is not sufficiently rehabilitated under section 12.1-33-02.1;
 - b. More than one violation of a law based on the acquisition, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food; or
 - c. Fraud in connection with transactions involving food.
2. For the purpose of this section anyone responsibly connected with a business means an individual who is a partner, officer, director, holder, or owner of ten percent or more of its voting stock or an employee in a managerial or executive capacity.

4.1-31-20. Detention of animals or products.

1. An inspector may detain an article or animal for up to twenty days pending a hearing or notification of authorities having jurisdiction over the article or animal if the inspector finds the article or animal on premises where it is held for purposes of, during, or after distribution in intrastate commerce and the inspector reasonably believes:
 - a. The article or animal is adulterated or misbranded and would otherwise be usable as human food;
 - b. The article or animal has not been inspected, in violation of this chapter or federal law; or

- c. The article or animal has been or is intended to be distributed in violation of this chapter or federal law.
2. Until it is released by the commissioner, a detained article or animal may not be moved by any person from the place at which it was located when detained. The commissioner may require all official marks to be removed from the detained article or animal before it is released unless the commissioner is satisfied the article or animal is eligible to retain the official marks.

4.1-31-21. Seizure and condemnation.

The commissioner may initiate action to seize and condemn a carcass or meat food product, or a dead, dying, disabled, or diseased animal that is being transported in intrastate commerce, or is held for sale in this state after transportation in intrastate commerce if:

1. The article is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;
2. The article is adulterated or misbranded and not suitable for use as human food; or
3. The article is in any other way violative of this chapter.

4.1-31-22. Destruction or sale of condemned items.

If an article or animal is condemned, it must be disposed of by destruction or sale, as directed by a court. If an article or animal is sold, the proceeds must be paid to the state, less the court costs, fees, storage, and reasonable expenses, but the article or animal must not be sold contrary to this chapter or federal law. If a bond is delivered conditioned that the article or animal not be sold or otherwise disposed of contrary to this chapter or federal law, the court may direct the article or animal be delivered to its owner subject to supervision by the commissioner.

4.1-31-23. Types of proceedings - Award of costs.

If a decree of condemnation is entered against an article or animal and it is released under bond or destroyed, a court may award costs, fees, storage, and other reasonable expenses against any person intervening as a claimant of the article or animal. Either party to a proceeding may demand trial by jury of any issue of fact joined in the case, and all proceedings must be in the name of the state. Nothing in this section changes the authority for condemnation or seizure otherwise conferred by law.

4.1-31-24. Powers of commissioner.

For the purposes of this chapter, the commissioner may:

1. Gather and compile information concerning and investigate the organization, business, conduct, practices, and management of a person in intrastate commerce and the person's relation to other persons.
2. Require a person engaged in intrastate commerce file with the commissioner, in the form and manner prescribed by the commissioner, annual and special reports or written answers to specific questions, giving the commissioner the information the commissioner requires about the organization, business,

conduct, practices, management, and relation to other persons, of the person filing the reports or answers.

3. Examine and copy documentary evidence of a person being investigated or being proceeded against. A person may not refuse to submit to the commissioner, for inspection and copying, any documentary evidence of a person subject to this chapter in the person's possession or control.
4. Fix the time of filing for a person required by this chapter to file an annual or special report. A person required by this chapter to file an annual or special report may not continue the failure for thirty days after notice of failure to file.
5. Adopt rules to implement this chapter, including establishing inspection fees for providing inspection services under this chapter.

4.1-31-25. Interstate shipment.

Meat and meat products inspected under this chapter may be shipped in interstate commerce when federal law permits state-inspected meat and meat products to be marketed interstate.

4.1-31-26. Penalties.

1. A person who willfully violates a provision of this chapter is guilty of a class A misdemeanor.
2. A person willfully violating this chapter or a rule adopted under this chapter is subject to a civil penalty not to exceed two hundred fifty dollars for each violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative proceeding.
3. Imposing a penalty allowed in subsection 1 or 2 does not preclude the commissioner from seeking to impose other sanctions or from seeking other remedies for violation of this chapter or rules adopted under this chapter.

SECTION 6. Chapter 4.1-32 of the North Dakota Century Code is created and enacted as follows:

4.1-32-01. License required to operate rendering plant.

A person may not operate a rendering plant or other establishment using the carcasses of domestic or wild animals, not intended for human consumption, for processing without first obtaining a license from the agriculture commissioner. A license to operate a rendering plant may be issued only upon a written application filed with the commissioner in accordance with this chapter and rules adopted by the board.

4.1-32-02. Inspection of rendering plant of applicant by state veterinarian.

The state veterinarian shall inspect an establishment for which a license is requested to operate a rendering plant, including its equipment and vehicles and the manner in which its business is conducted, with reference and due regard to the danger of animal disease transmission and dissemination, upon the receipt of an application for a license to operate a rendering plant or other establishment for processing the carcasses of domestic or wild animals, not intended for human consumption.

4.1-32-03. Granting of license - Fee - Term.

The agriculture commissioner shall issue a license to operate a rendering plant, if the inspection does not reveal any danger of animal disease transmission, upon payment of a fee of fifty dollars. The license is valid for a period of one year from the date of issuance unless it is revoked for cause by the commissioner before expiration.

4.1-32-04. Unloading chutes and vehicles used by rendering plant - Regulations governing.

1. Any unloading places or chutes used by a rendering plant or establishment must be on cement floors that can be cleaned and disinfected. Every vehicle used for transporting carcasses of dead animals to a rendering plant or establishment must:
 - a. Have a bed or tank not less than fifty inches [127 centimeters] in width which is all metal, metal lined, or watertight for at least six inches [15.24 centimeters] above the floor of the box or bed of the vehicle.
 - b. Have a metal-lined endgate that is hinged at the bottom of the bed or box of the vehicle and is fastened firmly to the top of the bed or box of the vehicle when closed.
 - c. Have sides, a top, and an endgate that will prevent flies and other insects from entering the vehicle.
 - d. Carry a tank filled with a solution approved by the state veterinarian for use as a disinfectant.
 - e. Be disinfected with the solution described in subdivision d after it has been used for collecting a dead animal and before it enters upon any public highway of this state. Special attention must be given to all those parts of the vehicle which came in contact with the ground while upon the premises.
 - f. Be thoroughly washed and disinfected with the solution described in subdivision d or with live steam, or both, after the dead animal has been unloaded at the rendering plant.
2. The operator of any vehicle used for transporting the carcasses of dead animals to a rendering plant shall wash with disinfectant, paying special attention to disinfecting the operator's hands and footwear, with the solution described in subdivision d of subsection 1 immediately after leaving any farm at which the operator has collected the carcass of a dead animal.

4.1-32-05. Removal of carcasses from vehicle - Prohibition.

A carcass collected at any farm in this state may not be removed from the vehicle except at a rendering plant or other establishment using the carcasses of domestic or wild animals, not intended for human consumption, for processing and final disposal.

4.1-32-06. Operator of vehicle for rendering plant to have certificate.

Any person operating a vehicle for an establishment licensed under this chapter must have an authorized certificate from the establishment which has been approved by the agriculture commissioner.

4.1-32-07. Inspection of plant authorized.

The operator of any establishment licensed under this chapter shall permit an official authorized by the state veterinarian or any health officer to inspect the licensed establishment at any time.

4.1-32-08. Rendering done by packing plants operating under federal inspection - Exception.

All rendering done by a packing plant operating under federal inspection in a building adjacent to or on the same premises as the packing plant is exempt from the provisions of this chapter, except that the transportation by the packing plant or any establishment licensed under this chapter of carcasses and other animal substances on any public highway or street is subject to the sanitary requirements of this chapter and the rules adopted by the state board of animal health.

4.1-32-09. Money collected - Where credited.

Money collected under this chapter must be deposited in the general fund by the state treasurer.

4.1-32-10. Restrictions on locating rendering plants.

An establishment licensed under this chapter may not be constructed within three miles [4.83 kilometers] of the limits of any municipality or within one mile [1.61 kilometers] of any farmstead unless the owner of the farmstead gives written consent.

4.1-32-11. Penalty.

Any person violating any provision of this chapter is guilty of a class B misdemeanor.

SECTION 7. Chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

4.1-41-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Brand name" means any word, name, symbol, or device, used singly or in combination, that identifies commercial feed and distinguishes it from that of all others.
2. "Commercial feed" means any materials, used singly or in combination, which are distributed, or are intended to be distributed, for use as feed or for mixing in feed, except:
 - a. Unmixed whole seeds and unmixed physically altered seeds, provided the seeds are not chemically changed or adulterated;
 - b. Commodities such as hay, straw, stover, silage, cobs, husks, and hulls, provided the commodities are:
 - (1) Not intermixed or mixed with other materials;
 - (2) Not adulterated; and

- (3) Specifically exempted by the agriculture commissioner;
 - c. Individual chemical compounds or substances, provided the chemical compounds or substances are:
 - (1) Not intermixed or mixed with other materials;
 - (2) Not adulterated; and
 - (3) Specifically exempted by the agriculture commissioner; and
 - d. Unprocessed grain screenings or unprocessed mixed grain screenings, provided:
 - (1) The distributor does not make oral or written reference to the nutritional value of the screenings;
 - (2) The screenings are not adulterated; and
 - (3) The screenings are specifically exempted by the agriculture commissioner.
- 3. "Contract feeder" means an independent contractor that feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to the independent contractor and the independent contractor's remuneration is determined in whole or in part by feed consumption, mortality, profits, or the amount or quality of the product.
- 4. "Customer-formula feed" means a commercial feed that is manufactured according to the specific instructions of the final purchaser.
- 5. "Distribute" means to:
 - a. Offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or
 - b. Supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder.
- 6. "Drug" means any article:
 - a. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in an animal other than a human; and
 - b. Other than feed, intended to affect the structure or function of an animal's body.
- 7. "Feed ingredient" means each of the constituent materials making up a commercial feed.
- 8. "Label" means any printed or stamped information on or attached to a commercial feed container or its wrapper and written information accompanying the distribution of a commercial feed or customer-formula feed.
- 9. "Manufacture" means to grind, mix, blend, or further process a commercial feed for distribution.

10. "Official sample" means any feed taken by the agriculture commissioner in accordance with section 4.1-41-13.
11. "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.
12. "Product name" means a term that identifies a commercial feed as to its kind, class, or specific use and which distinguishes that feed from all other products bearing the same brand name.
13. "Specialty pet food" means a commercial feed prepared and distributed for consumption by canaries, finches, gerbils, goldfish, hamsters, mynahs, psittacine birds, snakes, turtles, and any other domesticated animal normally maintained in a cage or a tank.

4.1-41-02. Manufacturer's license - Retailer's license.

1.
 - a. A person shall obtain a commercial feed manufacturer's license for each facility at which the person manufactures commercial feed if the person distributes the feed within this state.
 - b. A person shall obtain a commercial feed manufacturer's license if the person's name appears on the label of a commercial feed as a guarantor.
 - c. This subsection does not apply to a person that manufactures or guarantees pet food or specialty pet food.
2. A person shall obtain a commercial feed retailer's license for each facility at which the person sells commercial feed other than pet food or specialty pet food. This subsection does not apply to a person licensed as a commercial feed manufacturer.
3. In order to obtain an initial license required by this section, a person shall submit an application form at the time and in the manner required by the agriculture commissioner and:
 - a. If the person is applying for a manufacturer's license, a fee in the amount of one hundred twenty dollars for a manufacturer's license; or
 - b. If the person is applying for a retailer's license, a fee in the amount of sixty dollars.
4. To renew a license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:
 - a. If the person is applying for a manufacturer's license renewal, a fee in the amount of one hundred dollars; or
 - b. If the person is applying for a retailer's license renewal, a fee in the amount of fifty dollars.
5. A license issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.

6. If a person fails to renew a license within thirty-one days of its expiration, that person must apply for an initial license.

4.1-41-03. Product registration.

Each commercial feed manufacturer required to be licensed under this chapter shall register all feeds distributed in this state with the agriculture commissioner, at the time and in the manner required by the commissioner. This section does not apply to customer-formula feeds.

4.1-41-04. License - Registration - Hearing.

1.
 - a. The agriculture commissioner may refuse to issue a license to an applicant that is not in compliance with this chapter.
 - b. The commissioner may revoke an existing license if the licensee is not in compliance with this chapter.
 - c. The commissioner may refuse to register any feed and may cancel the registration of any feed if the registrant is not in compliance with this chapter.
2. Before the commissioner may act under this section, the commissioner shall provide the affected person with an opportunity for an informal hearing.

4.1-41-05. Pet food - Specialty pet food - Registration - Penalty.

1. Before being distributed in this state, each pet food product and each specialty pet food product must be registered with the agriculture commissioner. This requirement does not apply to a distributor, provided the pet food or specialty pet food is registered by another person.
2. To register pet food and specialty pet food, a person shall submit:
 - a. An application form at the time and in the manner required by the agriculture commissioner; and
 - b. A fee in the amount of one hundred twenty dollars.
3. To renew a registration required by this section, a person shall submit:
 - a. An application form at the time and in the manner required by the commissioner; and
 - b. A fee in the amount of one hundred dollars.
4. A registration issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. If a person fails to renew a registration within thirty-one days of its expiration, that person must apply for an initial registration.
6. Upon approving an application for an initial registration or a renewed registration, the commissioner shall furnish a certificate of registration to the applicant. A certificate of registration is not transferable.

7. Any person violating this section is subject to a penalty of twenty-five dollars for each product that must be registered.

4.1-41-06. Commercial feed - Label - Content.

Except as provided in section 4.1-41-07, any commercial feed that is distributed in this state must be labeled. The label must include:

1. The product's name, including any brand name under which the product is distributed;
2. The product's weight, volume, or quantity, as appropriate;
3. A guaranteed analysis expressed on an "as is" basis;
4. Unless waived by the agriculture commissioner in the interest of consumers, the commonly accepted name of each ingredient or, if permitted by the commissioner, a collective term for a group of ingredients that perform a similar function;
5. The name and principal mailing address of the manufacturer or the distributor;
6. Directions for use of any commercial feed containing drugs; and
7. Any precautionary statements recommended by the commissioner to ensure the safe and effective use of the feed.

4.1-41-07. Customer-formula feed - Label - Content.

Any customer-formula feed that is distributed in this state must be labeled.

1. The label must include:
 - a. The name and address of the manufacturer;
 - b. The name and address of the purchaser;
 - c. The date of delivery;
 - d. The product's name;
 - e. The weight, volume, or quantity, as appropriate, of each ingredient, including commercial feed; and
 - f. Any precautionary statement recommended by the agriculture commissioner to ensure the safe and effective use of the feed.
2. If the feed contains drugs, the label must also include:
 - a. The purpose of each drug;
 - b. The weight, volume, or quantity, as appropriate, of each drug; and
 - c. The name of each active ingredient.

4.1-41-08. Inspection fee.

1. An inspection fee at the rate of twenty cents per ton [907.18 kilograms] is required for all commercial feed distributed in this state. The minimum fee payable under this section is ten dollars.
2. Subsection 1 does not apply if:
 - a. The fee was paid earlier in the year by another person;
 - b. The commercial feed is to be used in the manufacturing of a registered commercial feed;
 - c. The feed is a customer-formula feed and the fee has been paid on the commercial feeds used as ingredients; or
 - d. The manufacturer produces only customer-formula feed.

4.1-41-09. Inspection fee - Responsibility for payment - Penalty.

1. The person responsible for payment of the inspection fee is:
 - a. The manufacturer listed on the label;
 - b. The guarantor listed on the label; or
 - c. The distributor listed on the label.
2. Before the close of business on each February fifteenth, the person responsible for the payment of the inspection fee shall provide to the agriculture commissioner:
 - a. A sworn statement indicating the number of net tons [kilograms] of commercial feed, by class, which the person distributed in this state during the immediately preceding calendar year; and
 - b. The inspection fees due in accordance with this chapter.
3. If the person responsible for the payment of the inspection fee fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date. If imposed, a penalty under this section may not be less than ten dollars nor more than two hundred fifty dollars.

4.1-41-10. Inspection fee - Records.

1. The person responsible for payment of the inspection fee shall maintain, for a period of three years, records of all transactions necessary to verify the statement of tonnage required by section 4.1-41-09.
2. The person shall make the records required by this section available to the agriculture commissioner for examination upon request.
3. If the commissioner determines the records required by this section were not maintained accurately, the commissioner may cancel all licenses on file for the distributor.

4.1-41-11. Adulteration.

A person may not distribute any commercial feed that is adulterated.

1. Commercial feed is adulterated if it contains any poisonous or harmful substance that may render the feed injurious to health. However, if the substance naturally occurs in the feed, the commercial feed may be considered adulterated under this subsection only if the substance is present in sufficient quantity to render it injurious to health.
2. Commercial feed is adulterated if it contains any added substance that is poisonous, harmful, or nonnutritive, and unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346]. This subsection does not apply to any pesticide in or on a raw agricultural commodity or to a food additive.
3. Commercial feed is adulterated if it contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].
4. a. Commercial feed is adulterated if it is a raw agricultural commodity and it contains a pesticide that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
 - b. However, if a pesticide has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a] and if the raw agricultural commodity has been subjected to a process such as canning, cooking, dehydration, freezing, or milling, any pesticide residue remaining in or on the processed feed may be deemed safe, provided:
 - (1) The residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice; and
 - (2) The concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity.
 - c. The exception set forth in subdivision b does not apply if the consumption of the processed feed may result in the edible product of the animal evidencing a pesticide residue that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
5. Commercial feed is adulterated if it contains any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 379e].
6. Commercial feed is adulterated if it contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 360b].
7. In addition to the foregoing subsections, commercial feed is adulterated if:
 - a. Any valuable constituent has been omitted, in whole or in part, thereby providing a lower nutritive value in the finished product;

- b. The composition or quality of the feed falls below or differs from that which is stated on its label;
- c. The feed contains added hulls, screenings, straw, cobs, or other high fiber material, unless each material is stated on the label;
- d. The feed contains viable weed seeds in amounts exceeding the limits the commissioner establishes by rule;
- e. The feed contains a drug and the methods used in or the facilities or controls used for its manufacturing, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner;
- f. The feed consists in whole or in part of any filthy, putrid, or decomposed substance, or if the feed is otherwise unfit for its intended use;
- g. The feed has been prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;
- h. The feed consists in whole or in part of the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 342];
- i. The feed's container is composed, in whole or in part, of any poisonous or harmful substance that may render the contents injurious to health;
- j. The feed has been packaged in bags or totes that previously contained pesticide products, treated seeds, or other hazardous materials; or
- k. The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].

4.1-41-12. Misbranding.

A person may not distribute any commercial feed that is misbranded. Commercial feed is misbranded if:

- 1. Its label is false or misleading;
- 2. It is distributed under the name of another commercial feed;
- 3. It is not labeled in accordance with this chapter;
- 4. It purports to be or is represented as being a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rules of the agriculture commissioner; or
- 5. Any information required on the label is not prominently placed, with conspicuousness, so as to render it readable and comprehensible by an individual under customary conditions of purchase and use.

4.1-41-13. Inspection, sampling, analysis.

1.
 - a. For purposes of enforcing this chapter, designated officers and employees of the agriculture commissioner may enter and inspect, during normal business hours, any factory, warehouse, or establishment in this state, in which commercial feeds are manufactured, processed, packed, or held for distribution, provided the individuals first present their credentials and written notice to the owner or manager.
 - b. For purposes of enforcing this chapter, designated officers and employees of the commissioner may enter and inspect any vehicle being used to transport or hold commercial feed, provided the individuals first present their credentials and written notice to the owner, manager, or driver.
2. Any inspection authorized under this section must take place at reasonable times, within reasonable limits, and in a reasonable manner. The inspection may include the verification of records and production and control procedures, as necessary to determine compliance with this chapter and rules implemented under this chapter.
3. A separate notice must be given for each authorized inspection. However, a separate notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the individual in charge of the facility or the individual in charge of the vehicle must be notified.
4. If the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give to the owner or manager a receipt describing the samples obtained.
5. If an officer or employee of the commissioner is denied entry as authorized by this section, the commissioner may obtain a warrant directing the owner or manager to submit the premises described in the warrant to inspection.
6. Any officer or employee of the commissioner authorized to enter any structure or vehicle in accordance with this section, may obtain samples and examine records relating to distribution of commercial feeds.
7. Sampling under this section must be conducted in accordance with generally recognized methods and any analysis of the samples taken must be conducted in accordance with generally recognized laboratory methods.
8. The commissioner shall forward the results of any sample analysis to the person named on the label and to the purchaser.
9. If an analysis indicates that a commercial feed has been adulterated or misbranded, within thirty days following receipt of the analysis, the person named on the label may request that the commissioner provide a portion of the sample.
10. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample.

4.1-41-14. Detained commercial feeds.

1. If the agriculture commissioner has reasonable cause to believe a lot of commercial feed is being distributed in violation of this chapter or any rules implementing this chapter, the commissioner may issue a "withdrawal from distribution" order, prohibiting the distributor from disposing of the lot until written permission is given by the commissioner or by a court. The commissioner shall release the lot of commercial feed when there has been compliance with this chapter and the rules implementing this chapter. If compliance is not obtained within thirty days, the commissioner may begin, or upon request of the distributor shall begin, proceedings for condemnation.
2. Any lot of commercial feed not in compliance with this chapter or rules implementing this chapter is subject to seizure on complaint of the commissioner to a court of competent jurisdiction. If the court finds the commercial feed to be in violation of this chapter or rules implementing this chapter and orders the condemnation of the commercial feed, it must be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. A court may not order disposition of the commercial feed without first giving the claimant an opportunity to apply for its release or for permission to process or relabel the commercial feed to bring it into compliance with this chapter and rules implementing this chapter.

4.1-41-15. Penalties.

1. It is a class A misdemeanor for any person to violate this chapter, the rules implementing this chapter, or impeding, obstructing, hindering, preventing, or attempting to prevent the agriculture commissioner from performing the commissioner's duties in connection with this chapter. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the person performing the analysis, or that person's authorized agent, must be accepted as prima facie evidence of the composition.
2. This chapter does not require the commissioner to seek prosecution or take any other legal action based on minor violations of the chapter if the commissioner deems the public interest will be best served by a suitable written warning.
3. Each state's attorney to whom any violation is reported shall institute appropriate proceedings to be prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution, the commissioner shall provide an opportunity for the distributor to show cause why the violation should not be reported for prosecution.
4. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule implementing this chapter. An injunction must be issued without bond.
5. Any person adversely affected by an act, order, or ruling made pursuant to this chapter may within forty-five days appeal the action to the district court for Burleigh County.

4.1-41-16. Publications.

1. The agriculture commissioner may publish information regarding commercial feeds, including their production, sales, and use, and publish a comparison of the analyses of official samples of commercial feeds sold in this state with the analyses guaranteed in their registration and on their label.
2. Information regarding the production and use of commercial feeds may not disclose the operations of any person.

4.1-41-17. Cooperation with other entities.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, the federal government, and private associations to carry out this chapter.

4.1-41-18. Certificates - Fees.

The agriculture commissioner may:

1. Implement a program to inspect, audit, and certify commercial feed manufacturing and distribution facilities, at the request of an owner;
2. Issue commercial feed export certificates; and
3. Establish a schedule of fees for the services provided under this section.

4.1-41-19. Deposit of fees.

The commissioner shall forward all inspection fees, license fees, and registration fees received under this chapter to the state treasurer. The state treasurer shall deposit the first seven hundred twenty-seven thousand five hundred dollars of fees received under this chapter each biennium in the environment and rangeland protection fund and any remaining fees in the general fund.

SECTION 8. Chapter 4.1-53 of the North Dakota Century Code is created and enacted as follows:

4.1-53-01. Definitions.

As used in this chapter:

1. "Livestock medicine" means all devices, remedies, cures, tonics, powders, proprietary medicines, type A medicated articles, and similar preparations for the treatment or prevention of any disease of livestock, poultry, or other domestic animals which are administered internally for their stimulating, invigorating, curative, or other than nutritive powers, and also all powders, sprays, dips, and other preparations for external use in the curing of scab or the eradication of ticks, lice, and other mites and parasites on livestock, poultry, or other domestic animals. The term does not include medicines that are manufactured, sold, or recommended primarily for human use.
2. "Type A medicated article" means a product with standardized potency containing one or more new animal drugs intended for use in the manufacture of another medicated article or a medicated feed.

4.1-53-02. Registration of livestock medicine.

The commissioner shall register any livestock medicine that does not violate this chapter, upon the completion of an application by the manufacturer or distributor of the livestock medicine and the payment of the registration fee prescribed in section 4.1-53-04. Registration of livestock medicine is valid for a two-year period beginning July first and ending June thirtieth of every even-numbered year unless it is canceled by the commissioner because a change is made in the ingredients or formula of the livestock medicine or in the name, brand, or trademark under which the medicine is sold. In the event of any change, the medicine must be registered once again through an original application with the commissioner.

The certificate of registration must include a disclosure of the name and quantity or proportion of each active ingredient and the names of the inert ingredients or fillers.

4.1-53-03. Regulations for sale.

A person may not sell, offer for sale, expose for sale, or possess with the intent to sell, any livestock medicine:

1. That is sold under a name, brand, trademark, or labeling that is misleading, deceptive, false, or dangerous to animals under the conditions of use prescribed in the labeling or advertising;
2. That purports to cure any infectious disease of domestic animals for which no genuine cure is known;
3. That has not been registered by the commissioner for sale in this state;
4. That does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
 - a. The common name, in English, of all active ingredients in the order of their predominance in the product;
 - b. A statement of the actual percentage or relative amounts of each ingredient active and inert, unless exemptions are established by rules adopted by the commissioner;
 - c. The net contents, by weight, measure, or numerical count of the package;
 - d. The name and principal address of the manufacturer or person responsible for placing the livestock medicine on the market; and
 - e. Complete and explicit directions for use of the medicine.
5. If the contents of the package as originally manufactured have been removed in whole or in part, and other contents have been placed in the package.

4.1-53-04. Registration fee.

A registration fee of forty dollars must be paid to the commissioner for each livestock medicine that is registered prior to each two-year registration ending June thirtieth of every even-numbered year. An application for registration which is received

by the commissioner after July thirty-first of the year in which the application is due must be assessed an additional late registration fee of ten dollars.

4.1-53-05. Commissioner may cancel registration.

The commissioner may cancel the registration of any livestock medicine that is sold in violation of this chapter.

4.1-53-06. Commissioner may adopt rules, take testimony, grant public hearings.

The commissioner may adopt rules under chapter 28-32, governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter. The commissioner may take expert and other testimony and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

4.1-53-07. Enforcement.

The commissioner shall enforce this chapter through inspection, chemical analysis, and any other appropriate method. All samples for analysis must be taken from stocks held within, or intended for sale in, this state. The commissioner may require any manufacturer or distributor applying for registration of a livestock medicine to supply samples of the medicine for analysis. The commissioner may institute any action at law or in equity as may appear necessary to enforce compliance with the provisions of this chapter, and in addition to any other remedy, may apply to the district court for relief by injunction, mandamus, or any other appropriate remedy in equity. In such actions, the commissioner is not required to give or post bond in any action to which the commissioner is a party whether upon appeal or otherwise.

4.1-53-08. Penalty - Criminal - Civil.

It is a class B misdemeanor for any person to willfully violate a provision of this chapter or any rule adopted under this chapter, or who willfully and falsely represents that any livestock medicine is registered for sale in this state. A person who violates a provision of this chapter or a rule adopted under this chapter is subject to a civil penalty not to exceed five hundred dollars per violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

²⁷ **SECTION 9. AMENDMENT.** Secti on 23-01-25 of the North Dakota Century Code is amended and reenacted as follows:

23-01-25. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 19-13-14.1-41, 19-18, or 19-20.1 must be performed by the state department of health for the agriculture commissioner at no charge.

²⁷ Section 23-01-25 was also amended by section 12 of Senate Bill No. 2027, chapter 67.

SECTION 10. AMENDMENT. Section 36-21-01 of the North Dakota Century Code is amended and reenacted as follows:

36-21-01. ~~Regulations governing fraudulent~~Fraudulent registration or representation of purebred livestock - Penalty.

~~Any~~It is a class B misdemeanor for a person who shallto:

1. ~~Fraudulently~~ represent any animal ~~to be~~as purebred;
2. Post or publish, or cause to be posted or published, any false pedigree or certificate;
3. Procure by fraud, false pretense, or misrepresentation, the registration of any animal ~~which is to be used for service, sale, or exchange in this state, for the purpose of deception as to the~~ animal's pedigree ~~thereof~~;
4. Sell, or otherwise dispose of, any animal as a purebred when the person knows or has reason to believe that the animal is not the offspring of a regularly registered purebred sire and dam; or
5. Sell, or otherwise dispose of, any animal as a registered purebred ~~by the use of~~using a false pedigree or certificate of registration;

~~is guilty of a class B misdemeanor.~~

SECTION 11. AMENDMENT. Section 36-21-10 of the North Dakota Century Code is amended and reenacted as follows:

36-21-10. Dogs, wolves, and coyotes worrying livestock or poultry may be killed.

Any person ~~may kill~~who kills any dog, wolf, or coyote kept as a domestic animal ~~is not liable in any civil action to the owner of the animal.~~

1. When the person sees such animal in the act of killing, chasing, worrying, or damaging any livestock or poultry; or
2. When the person discovers such animal under circumstances ~~which satisfactorily show evidence that the animal recently it has been engaged in~~ which ~~killing~~killed or ~~chasing~~chased sheep.

~~A person who kills any dog, wolf, or coyote under conditions specified in this section is not liable in any civil action to the owner of such animal.~~

SECTION 12. AMENDMENT. Section 36-21-11 of the North Dakota Century Code is amended and reenacted as follows:

36-21-11. ~~Owners of dogs liable~~Liability for damages done to livestock - Procedure when damages done by pack of dogs.

The owner of any dog ~~which~~that kills, wounds, or chases any sheep or other domestic animal or poultry belonging to another person is liable to ~~such other~~that person for all resulting damages caused thereby. If ~~one or more of several dogs which are~~than one dog, owned by different persons, participates in the killing, wounding, or chasing of sheep or other domestic animals or poultry ~~while running together~~, the owners of the respective dogs ~~so running together~~ may be sued jointly, and a joint

~~verdict and judgment may be rendered against the owners of such dogs the owners. If one or more of the defendants pays such a joint judgment and if the damages committed by the dogs may be prorated, the payor or payors may have receive contribution from the defendants who have not paid in an appropriate action in which the respective damages committed by the several dogs running together may be prorated. No exemption is allowed to any person against whom a judgment is entered under the provisions of this section.~~

SECTION 13. AMENDMENT. Section 36-21-12 of the North Dakota Century Code is amended and reenacted as follows:

36-21-12. Killing of livestock by railroad is prima facie evidence of negligence.

The killing or damaging of any livestock by a railroad car or locomotive is prima facie evidence of ~~carelessness and negligence on the part of~~by the railway company or corporation.

SECTION 14. AMENDMENT. Section 36-21-13 of the North Dakota Century Code is amended and reenacted as follows:

36-21-13. Exemplary damages for wrongful injuries to domestic animals.

Exemplary damages may be ~~given to the owner of any animal~~applied for any wrongful injury thereto ~~when such injury is to an animal~~ committed willfully or by gross negligence.

SECTION 15. AMENDMENT. Section 36-21-15 of the North Dakota Century Code is amended and reenacted as follows:

36-21-15. Sale of livestock by weight.

All livestock sold by weight at any public market must be sold subject to the weight at the place of sale on the day sold by the auctioneer.

SECTION 16. AMENDMENT. Section 36-21-18 of the North Dakota Century Code is amended and reenacted as follows:

36-21-18. Title to property to remain in market with seller until settlement made.

~~Before any~~Any person, association, copartnership, firm, corporation, or limited liability company may become a purchaser ~~that purchases livestock at any sale conducted by an auction market established under the laws of this state, such prospective purchaser must file satisfactory evidence with the operator of such auction market that any~~pay for the livestock with cash, check, draft, or bill of exchange issued and delivered to such auction market in payment of any livestock purchased shall be honored by the drawee bank any other method of payment generally accepted by financial institutions in this state. For a noncash purchase and transfer of title to be valid, the financial institution of the purchaser shall honor the payment at the time of presentation for payment, and until such check, draft, or other bill of exchange has been duly honored and paid, the title to the livestock so purchased is in the auction market making such sale.

SECTION 17. AMENDMENT. Section 36-21-19 of the North Dakota Century Code is amended and reenacted as follows:

36-21-19. Equine processing assessment - Continuing appropriation - Provision of grants.

1. For each equine processed at an equine processing facility in this state, the owner of the facility shall ~~submit~~remit to the agriculture commissioner, at the time and in the manner directed by the commissioner, an assessment in the amount of five dollars. The commissioner shall forward the assessment to the state treasurer for deposit of the first fifty thousand dollars in the state general fund and any additional amount in the equine processing fund.
2. All moneys in the equine processing fund are appropriated on a continuing basis to the agriculture commissioner to be used ~~as follows~~to:
 - a. ~~The agriculture commissioner shall return to the state general fund the fifty thousand dollars appropriated to the department of commerce for the equine processing facility feasibility study.~~
 - b. ~~Upon completion of the requirement set forth in subdivision a, the commissioner shall:~~
 - (1) Provide an annual grant equaling forty percent of any assessments collected to Dickinson state university in support of the equine management program;
 - (2)b. Provide an annual grant equaling forty percent of any assessments collected to North Dakota state university in support of the equine studies program; and
 - (3)c. Provide an annual grant equaling twenty percent of any assessments collected to public or private entities conducting equine research or offering hippotherapy to individuals with disabilities.

SECTION 18. REPEAL. Chapters 19-13.1, 19-14, 36-05, 36-05.1, 36-06, and 36-07 and section 36-21-05 and chapter 36-24 of the North Dakota Century Code are repealed.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 69

HOUSE BILL NO. 1127

(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 the definition of Pasteurized Milk Ordinance and to the Pasteurized Milk Ordinance revision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 21 of section 4-30-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Pasteurized Milk Ordinance" means the ~~2013~~2015 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 - ~~2013~~2015 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 - ~~2013~~2015 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, ~~2013~~2015 Revision".

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 70

HOUSE BILL NO. 1291

(Representatives D. Johnson, Boschee, Trottier)
(Senators Armstrong, O. Larsen, Luick)

AN ACT to create and enact a new section to chapter 4.1-72 of the North Dakota Century Code, relating to authority to use a uniform summons and complaint by brand inspectors who are licensed peace officers; to amend and reenact section 4.1-72-04 of the North Dakota Century Code, relating to brand inspectors as licensed peace officers; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-72-04 of the North Dakota Century Code is amended and reenacted as follows:

4.1-72-04. Chief brand inspector - Deputy brand inspectors - Licensed peace officers.

The chief brand inspector and any individual employed by the North Dakota stockmen's association to serve as a deputy brand inspector must be licensed peace officers in accordance with chapter 12-63 or hold a limited peace officer license under section 12-63-09. As used in this section "peace officer" has the same meaning as in section 12-63-01. These individuals peace officers may exercise the full authority of their license to enforce the brand laws and any other state laws relating to livestock. The chief brand inspector and the deputy brand inspectors may provide aid and assistance to other law enforcement agencies or officers, upon request, provided the requests are not for continuous or ongoing assistance.

SECTION 2. A new section to chapter 4.1-72 of the North Dakota Century Code is created and enacted as follows:

Uniform complaint and summons - Promise to appear - Penalty.

1. There is established a uniform complaint and summons that may be used by licensed peace officers under section 4.1-72-04 in cases involving violations of this title or other violations of state law. Whenever the complaint and summons established by this section is used, the provisions of the North Dakota Rules of Criminal Procedure apply. The uniform complaint and summons must comply with the North Dakota Rules of Criminal Procedure.
2. The time of court appearance to be specified in the summons must be at least five days after the issuance of the summons unless the defendant demands an earlier hearing.
3. Upon receipt from the defendant of a written promise to appear at the time and place specified in the summons, the defendant must be released from custody. After signing a promise to appear, the defendant must be given a copy of the uniform complaint and summons. Any individual refusing to give a written promise to appear may be arrested if proper cause exists, or

proceeded against by complaint and warrant of arrest as provided in the North Dakota Rules of Criminal Procedure.

4. If an individual fails to appear in court after promising to do so, the court may issue an arrest warrant.

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

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 71

HOUSE BILL NO. 1208

(Representatives D. Johnson, Boschee, Kempenich, Trottier)
(Senators Dotzenrod, Erbele, O. Larsen, Luick, Wanzek)

AN ACT to amend and reenact section 4.1-73-18 of the North Dakota Century Code, relating to livestock bills of sale; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-73-18 of the North Dakota Century Code is amended and reenacted as follows:

4.1-73-18. Bill of sale - Copy with shipment - Effect - Penalty.

1. a. Except as provided in subsection 2, a person may not sell any livestock carrying a recorded brand unless the seller is the owner of the recorded brand and delivers a bill of sale for the livestock to the purchaser. The bill of sale must include:
 - (1) The date;
 - (2) The name, address, and signature of the seller;
 - (3) The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
 - (4) The name and address of the buyer;
 - (5) The total number of animals sold;
 - (6) A description of each animal sold as to sex and color; and
 - (7) A depiction of the recorded brand.
- b. The seller must deliver a bill of sale to the purchaser within fifteen days of the date of the sale.
- c. The buyer shall retain the bill of sale for as long as the buyer owns any animals described in the bill of sale.
- d. The seller shall provide a copy of the bill of sale to the individual hauling the livestock. The individual shall ensure that the document remains with the livestock while in transit.
- e. The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any law enforcement officer or brand inspector.
- f. The bill of sale is prima facie evidence of the sale of the livestock described in the bill of sale.

2. Subsection 1 does not apply to the sale of livestock for which a brand inspector has issued a certificate of ownership.
3. Any person willfully violating this section is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

Approved March 14, 2017

Filed March 15, 2017

ALCOHOLIC BEVERAGES

CHAPTER 72

HOUSE BILL NO. 1059

(Representatives Owens, Olson, Streyle, B. Koppelman, Beadle, O'Brien, Blum)
(Senators Holmberg, Meyer)

AN ACT to amend and reenact subsection 6 of section 5-02-06 of the North Dakota Century Code, relating to the employment of individuals under twenty-one years of age at establishments where alcoholic beverages are sold.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 5-02-06 of the North Dakota Century Code is amended and reenacted as follows:

6. An restaurant may employ an individual who is eighteen years of age or older but under twenty-one years of age to serve and collect money for alcoholic beverages, if the individual is under the direct supervision of an individual twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where that sells alcoholic beverages may employ an individual from eighteen to twenty-one years of age to work in the capacity of musician on the premises as a musician, disc jockey, or entertainer, or to perform duties directly related to working as a musician, disc jockey, or entertainer if the individual is under the direct supervision of an individual twenty-one or more years of age.

Approved March 9, 2017

Filed March 9, 2017

BANKS AND BANKING

CHAPTER 73

SENATE BILL NO. 2212

(Senators Casper, Campbell, Kreun)
(Representatives Kasper, Sanford, P. Anderson)

AN ACT to amend and reenact subsection 4 of section 6-03-02 and section 6-05-06 of the North Dakota Century Code, relating to residency requirements of bank directors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 at least two-thirds~~ of whom must be ~~residents~~citizens of the ~~state of North Dakota~~ United States, and, by such board of directors, to appoint a president, who must be a member of said board, 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 2. AMENDMENT. Section 6-05-06 of the North Dakota Century Code is amended and reenacted as follows:

6-05-06. Directors - Qualifications - Terms - Vacancies.

All the corporate powers of such a corporation must be exercised by a board of directors of not less than three nor more than twenty-five in number, and such officers and agents as it elects or appoints. ~~A majority~~At least two-thirds of the directors must be citizens of ~~this state~~the United States. Any director who becomes in any manner disqualified shall vacate that director's office thereupon. Every director, when elected or appointed, shall take the oath specified in section 6-03-04. Such oath, subscribed by the director making it and certified by the officer before whom it was taken, must be transmitted at once to the commissioner to be filed in the commissioner's office. The articles of incorporation must state the names and residences of the first board of directors, of whom the first named one-third shall serve for a period of three years, the second one-third named for a period of two years, and the balance thereof shall serve for a period of one year from the date fixed for the commencement of such corporation. In case any of the persons so named shall fail or refuse to qualify from any cause, the directors who qualify must elect qualified persons to fill such vacancies, and thereafter, at each annual meeting of the stockholders, directors must be elected to serve three years in place of those whose terms then expire.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 74

SENATE BILL NO. 2335

(Senators Heckaman, D. Larson, J. Lee, Unruh)
(Representative Weisz)

AN ACT to amend and reenact subsection 7 of section 6-08.1-03, sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and subdivision f of subsection 1 of section 19-03.1-22.2 of the North Dakota Century Code, relating to the definition and endangerment or exploitation of an eligible adult; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 6-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

7. For purposes of reporting suspected exploitation of ~~a disabled adult or vulnerable elderly~~ an eligible 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~~ an eligible adult or to make ~~any~~ any report to a governmental agency or law enforcement agency.

SECTION 2. AMENDMENT. Section 12.1-31-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-07. Endangering ~~a vulnerable~~ an eligible adult - Penalty.

1. In this chapter, unless the context otherwise requires:
 - a. "Caregiver" means a person who is responsible for the care of ~~a disabled adult or vulnerable elderly~~ an eligible adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of ~~a disabled adult or vulnerable elderly~~ an eligible adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to ~~a disabled adult or vulnerable elderly~~ an eligible adult who is the patient or client of the licensed health care provider.
 - b. "~~Disabled adult~~" means ~~a person eighteen years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.~~
 - c. "~~Vulnerable elderly adult~~" means ~~a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.~~

"Eligible adult" means an individual who is at least sixty-five years old or a vulnerable adult as defined in section 50-25.2-01.

- c. "Undue influence" means the use of a position of trust and confidence with an eligible adult to exploit or take advantage of that eligible adult through actions or tactics, including emotional, psychological, or legal manipulation.
2. Except as provided for by chapters 23-06.5 and 30.1-30, a caregiver who knowingly performs an act that causes a ~~disabled adult's or vulnerable elderly~~ eligible adult's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the ~~disabled adult or vulnerable elderly~~ eligible adult and the failure causes the ~~disabled adult's or vulnerable elderly~~ eligible adult's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, is guilty of a class B felony.

SECTION 3. AMENDMENT. Section 12.1-31-07.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-07.1. Exploitation of a ~~vulnerable~~ eligible adult - Penalty.

1. A person is guilty of exploitation of a ~~disabled adult or vulnerable elderly~~ eligible adult if:
- The person stands in a position of trust and confidence or has a business relationship with the ~~disabled adult or vulnerable elderly~~ eligible adult and knowingly, by deception or, intimidation, or undue influence, obtains or uses, or attempts to obtain or use, the ~~disabled adult's or vulnerable elderly~~ eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the ~~disabled adult or vulnerable elderly~~ eligible adult of the use, benefit, or possession of the property, for the benefit of someone other than the ~~disabled adult or vulnerable elderly~~ eligible adult; or
 - The person knows that the ~~disabled adult or vulnerable elderly~~ eligible adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the ~~disabled adult's or vulnerable elderly~~ eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the ~~disabled adult or vulnerable elderly~~ eligible adult of the use, benefit, or possession of the property for the benefit of someone other than the ~~disabled adult or vulnerable elderly~~ eligible adult.
2. Exploitation of a ~~disabled adult or vulnerable elderly~~ eligible adult is:
- A class A felony if the value of the exploited funds, assets, or property exceeds fifty thousand dollars.
 - A class B felony if the value of the exploited funds, assets, or property exceeds ten thousand dollars but does not exceed fifty thousand dollars.
 - A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed ten thousand dollars.

- d. A class A misdemeanor if the value of the exploited funds, assets, or property does not exceed one thousand dollars.
3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
4. This section does not impose criminal liability on a person who has:
 - a. Managed the ~~disabled adult's or vulnerable elderly~~eligible adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or
 - b. Made a good-faith effort to assist in the management of the ~~disabled adult's or vulnerable elderly~~eligible adult's funds, assets, or property.

SECTION 4. AMENDMENT. Section 12.1-31-07.2 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-07.2. Criminal proceeding involving a ~~vulnerable~~eligible adult - Speedy trial.

In a criminal proceeding in which a ~~disabled adult or vulnerable elderly~~an eligible adult is a victim, the court and state's attorney shall take appropriate action to ensure a speedy trial to minimize the length of time the ~~disabled adult or vulnerable elderly~~eligible adult must endure the stress of involvement in the proceedings. In ruling on ~~any~~ a motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of the ~~disabled adult or vulnerable elderly~~eligible adult.

SECTION 5. AMENDMENT. Subdivision f of subsection 1 of section 19-03.1-22.2 of the North Dakota Century Code is amended and reenacted as follows:

- f. "Vulnerable adult" means either a ~~disabled adult or vulnerable elderly~~ adult as ~~these terms are~~ the term is defined in section ~~12.1-31-0750-25.2-01~~.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 75

SENATE BILL NO. 2311

(Senators Bekkedahl, Laffen, Sorvaag)
(Representative Streyle)

AN ACT to provide for a Bank of North Dakota letter of credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BANK OF NORTH DAKOTA - LETTER OF CREDIT - AIRPORT CONSTRUCTION. The Bank of North Dakota shall provide a letter of credit to a city, in the northwest corner of the state with a population over twenty thousand residents, which is constructing an airport and is subject to the bonding requirements under section 52-04-06.1. The letter of credit shall cover the length of the construction term not to exceed five years. The Bank of North Dakota shall charge a one-time fee of no more than three quarters of one percent of the total amount of the letter of credit. The city obtaining the letter of credit assumes all liability for the letter of credit, the fee to be paid to the Bank of North Dakota, and any other requirements under section 52-04-06.1.

Approved April 12, 2017

Filed April 12, 2017

CHAPTER 76

SENATE BILL NO. 2124

(Government and Veterans Affairs Committee)
(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 6-09-38.1 of the North Dakota Century Code, relating to the achieving a better life experience plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-38.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09-38.1. North Dakota achieving a better life experience plan - Administration - Rules - Continuing appropriation.

The Bank of North Dakota shall adopt rules to administer, manage, promote, and market the North Dakota achieving a better life experience plan. The Bank shall ensure that the North Dakota achieving a better life experience plan is maintained in compliance with internal revenue service standards for qualified state disability expense programs. The Bank, as trustee of the North Dakota achieving a better life experience plan, may impose an annual administrative fee to recover expenses incurred in connection with operation of the plan. Administrative fees received by the Bank are appropriated to the Bank on a continuing basis to be used as provided under this section. Money and assets in North Dakota achieving a better life experience plan accounts or in qualified achieving a better life experience plan accounts in any state may not be considered for the purpose of determining eligibility to receive, or the amount of, any assistance or benefits from local or state means-tested programs.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 77

SENATE BILL NO. 2178

(Senators Schaible, Luick, Oehlke)
(Representatives Carlson, D. Johnson, Schmidt)

AN ACT to amend and reenact section 6-09-49 of the North Dakota Century Code, relating to the infrastructure revolving loan fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-49 of the North Dakota Century Code is amended and reenacted as follows:

6-09-49. Infrastructure revolving loan fund - Continuing appropriation.

1. The infrastructure revolving loan fund is a special fund in the state treasury from which the Bank of North Dakota shall provide loans to political subdivisions for essential infrastructure projects. The Bank shall administer the infrastructure revolving loan fund. The maximum term of a loan made under this section is thirty years. A loan made from the fund under this section must have an interest rate that does not exceed two percent per year.
2. ~~The Bank shall establish priorities for making loans from the infrastructure revolving loan fund. Loan funds must be used to address the needs of the community by providing critical infrastructure funding. Except as expressly provided under this section, a political subdivision may not use infrastructure revolving loan funds for capital construction. In addition to eligible infrastructure needs established by the Bank, eligible infrastructure needs may include new~~For purposes of this section, "essential infrastructure projects" means capital construction projects for the following:
 - a. New or replacement of existing water treatment plants; new
 - b. New or replacement of existing wastewater treatment plants; new
 - c. New or replacement of existing sewer lines and water lines; and new
 - d. New or replacement of existing storm water and transportation infrastructure, including curb and gutter construction.
3. In processing political subdivision loan applications under this section, the Bank shall calculate the maximum loan amount for which a qualified applicant may qualify, not to exceed fifteen million dollars per loan. The Bank shall consider the applicant's ability to repay the loan when processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan. ~~The Bank may adopt policies establishing priorities for issuance of loans, setting additional qualifications for applicants, and establishing timelines addressing when a participating political subdivision may be required to make loan draws and the consequences of not meeting these timelines, and setting other guidelines relating to the loan program under this section.~~

4. The Bank shall deposit in the infrastructure revolving loan fund all payments of interest and principal paid under loans made from the infrastructure revolving loan fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs which may not exceed one-half of one percent of the amount of the interest payment. All moneys transferred to the fund, interest upon moneys in the fund, and payments to the fund of principal and interest are appropriated to the Bank on a continuing basis for administrative costs and for loan disbursement according to this section.
5. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with the provisions of this section and to supplement and leverage the funds in the infrastructure revolving loan fund. Additionally, the Bank may adopt policies allowing participation by local financial institutions.

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

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 78

HOUSE BILL NO. 1192

(Representative Klemin)

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. Notification by the public finance authority, school district, or the paying agent that satisfactory arrangements have been made for the payment of the principal and interest then due and owing under subsection 1 must be made at least fifteen working days before the principal or interest is due. The notice must be in writing and include the name of the school district, an identification of the debt obligation issue, the date the payment is due, the amount of principal and interest due on the payment date, the amount of principal or interest the school district will be unable to pay, the paying agent for the debt obligation, the wire transfer instructions to transfer funds to the paying agent, and an indication that payment is requested under this section. A paying agent shall notify the superintendent of public instruction if the paying agent becomes aware of a potential default. If the superintendent receives notice of a requested payment under this section, the superintendent of public instruction shall withhold and transfer funds due or payable or appropriated to the school district under chapter 15.1-27 to the paying agent after:

- a. Consulting with the school district and the paying agent; and
 - b. Verifying the accuracy of the provided request information.
3. 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.
- ~~3-4.~~ 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.
- 4-5. 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.
- ~~5-6.~~ 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 March 22, 2017

Filed March 23, 2017

CONTRACTS AND OBLIGATIONS

CHAPTER 79

HOUSE BILL NO. 1212

(Representative Klemin)

(Senator Hogue)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 9-15.2 of the North Dakota Century Code, relating to the Revised Uniform Athlete Agents Act; to repeal chapter 9-15.1 of the North Dakota Century Code, relating to the Uniform Athlete Agents Act; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 9-15.2 of the North Dakota Century Code is created and enacted as follows:

9-15.2-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the athlete a professional sports services contract or endorsement contract.
2. "Athlete agent":
 - a. Means an individual, whether or not registered under this chapter, who:
 - (1) Directly or indirectly recruits or solicits a student-athlete to enter an agency contract or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a student-athlete as a professional athlete or member of a professional sports team or organization;
 - (2) For compensation or in anticipation of compensation related to a student-athlete's participation in athletics:
 - (a) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or
 - (b) Manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes; or

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- (3) In anticipation of representing a student-athlete for a purpose related to the athlete's participation in athletics:
- (a) Gives consideration to the student-athlete or another person;
 - (b) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or
 - (c) Manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes; but
- b. Does not include an individual who:
- (1) Acts solely on behalf of a professional sports team or organization; or
 - (2) Is a licensed, registered, or certified professional and offers or provides services to a student-athlete customarily provided by members of the profession, unless the individual:
 - (a) Also recruits or solicits the athlete to enter into an agency contract;
 - (b) Also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or
 - (c) Receives consideration for providing the services calculated using a different method than for an individual who is not a student-athlete.
3. "Athletic director" means the individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.
4. "Educational institution" includes a public or private elementary school, secondary school, technical or vocational school, community college, college, and university.
5. "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.
6. "Enrolled or enrolls" means registered for courses and attending athletic practice or class.
7. "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association that promotes or regulates collegiate athletics.
8. "Interscholastic sport" means a sport played between educational institutions that are not community colleges, colleges, or universities.

9. "Licensed, registered, or certified professional" means an individual licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession, other than that of athlete agent, who is licensed, registered, or certified by the state or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing.
10. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
11. "Professional sports services contract" means an agreement under which an individual is employed as a professional athlete or agrees to render services as a player on a professional sports team or with a professional sports organization.
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. "Recruit or solicit" means an attempt to influence the choice of an athlete agent by a student-athlete or, if the athlete is a minor, a parent or guardian of the athlete. The term does not include giving advice on the selection of a particular agent in a family, coaching, or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent.
14. "Registration" means registration as an athlete agent under this chapter.
15. "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.
16. "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.
17. "Student-athlete" means an individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, an interscholastic or intercollegiate sport. The term does not include an individual permanently ineligible to participate in a particular interscholastic or intercollegiate sport for that sport.

9-15.2-02. Secretary of state - Authority - Procedure.

1. Chapter 28-32 applies to this chapter. The secretary of state may adopt rules under chapter 28-32 to implement this chapter.
2. By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual acting as an athlete agent in this state.

3. The secretary of state may issue a subpoena for material that is relevant to the administration of this chapter.

9-15.2-03. Athlete agent - Registration required - Void contract.

1. Except as provided in subsection 2, an individual may not act as an athlete agent in this state without holding a certificate of registration under this chapter.
2. Before being issued a certificate of registration under this chapter an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - a. A student-athlete or another person acting on behalf of the athlete initiates communication with the individual; and
 - b. Not later than seven days after an initial act that requires the individual to register as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
3. An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

9-15.2-04. Registration as athlete agent - Application - Requirements - Reciprocal registration.

1. An applicant for registration as an athlete agent shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. The applicant must be an individual, and the application must be signed by the applicant under penalty of perjury. The application must contain at least the following:
 - a. The name and date and place of birth of the applicant and the following contact information for the applicant:
 - (1) The address of the applicant's principal place of business;
 - (2) Work and mobile telephone numbers; and
 - (3) Any means of communicating electronically, including a facsimile number, electronic mail, and personal and business or employer websites;
 - b. The name of the applicant's business or employer, if applicable, including for each business or employer, its mailing address, telephone number, organization form, and the nature of the business;
 - c. Each social media account with which the applicant or the applicant's business or employer is affiliated;
 - d. Each business or occupation in which the applicant engaged within five years before the date of the application, including self-employment and employment by others, and any professional or occupational license, registration, or certification held by the applicant during that time;

- e. A description of the applicant's:
- (1) Formal training as an athlete agent;
 - (2) Practical experience as an athlete agent; and
 - (3) Educational background relating to the applicant's activities as an athlete agent;
- f. The name of each student-athlete for whom the applicant acted as an athlete agent within five years before the date of the application or, if the individual is a minor, the name of the parent or guardian of the minor, together with the athlete's sport and last-known team;
- g. The name and address of each person that:
- (1) Is a partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of five percent or greater of the athlete agent's business if it is not a corporation; and
 - (2) Is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent or greater in the corporation;
- h. A description of the status of any application by the applicant, or any person named under subdivision g, for a state or federal business, professional, or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or termination of the license and any reprimand or censure related to the license;
- i. Whether the applicant, or any person named under subdivision g, has pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this state and, if so, identification of:
- (1) The crime;
 - (2) The law enforcement agency involved; and
 - (3) If applicable, the date of the conviction and the fine or penalty imposed;
- j. Whether, within fifteen years before the date of application, the applicant, or any person named under subdivision g, has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of legal incompetence and, if so, the date and a full explanation of each proceeding;
- k. Whether the applicant, or any person names under subdivision g, has an unsatisfied judgment or a judgment of continuing effect, including spousal support or a domestic order in the nature of child support, which is not current at the date of the application;

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- l. Whether, within ten years before the date of application, the applicant, or any person named under subdivision g, was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;
 - m. Whether there has been any administrative or judicial determination that the applicant, or any person named under subdivision g, made a false, misleading, deceptive, or fraudulent representation;
 - n. Each instance in which conduct of the applicant, or any person named under subdivision g, resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student-athlete or a sanction on an educational institution;
 - o. Each sanction, suspension, or disciplinary action taken against the applicant, or any person named under subdivision g, arising out of occupational or professional conduct;
 - p. Whether there has been a denial of an application for, suspension or revocation of, refusal to renew, or abandonment of, the registration of the applicant, or any person named under subdivision g, as an athlete agent in any state;
 - q. Each state in which the applicant currently is registered as an athlete agent or has applied to be registered as an athlete agent;
 - r. If the applicant is certified or registered by a professional league or players association:
 - (1) The name of the league or association;
 - (2) The date of certification or registration, and the date of expiration of the certification or registration, if any; and
 - (3) If applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand or censure related to the certification or registration; and
 - s. Any additional information required by the secretary of state.
 2. Instead of proceeding under subsection 1, an individual registered as an athlete agent in another state may apply for registration as an athlete agent in this state by submitting to the secretary of state:
 - a. A copy of the application for registration in the other state;
 - b. A statement that identifies any material change in the information on the application or verifies there is no material change in the information, signed under penalty of perjury; and
 - c. A copy of the certificate of registration from the other state.

3. The secretary of state shall issue a certificate of registration to an individual who applies for registration under subsection 2 if the secretary of state determines:
 - a. The application and registration requirements of the other state are substantially similar to or more restrictive than this chapter; and
 - b. The registration has not been revoked or suspended and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.
4. For purposes of implementing subsection 3, the secretary of state may:
 - a. Cooperate with national organizations concerned with athlete agent issues and agencies in other states which register athlete agents to develop a common registration form and determine which states have laws that are substantially similar to or more restrictive than this chapter; and
 - b. Exchange information, including information related to actions taken against registered athlete agents or their registrations, with those organizations and agencies.

9-15.2-05. Certificate of registration - Issuance or denial - Renewal.

1. Except as otherwise provided in subsection 2, the secretary of state shall issue a certificate of registration to an applicant for registration who complies with subsection 1 of section 9-15.2-04.
2. The secretary of state may refuse to issue a certificate of registration to an applicant for registration under subsection 1 of section 9-15.2-04 if the secretary of state determines that the applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
 - a. Pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this state;
 - b. Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
 - c. Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - d. Engaged in conduct prohibited by section 9-15.2-13;
 - e. Had a registration as an athlete agent suspended, revoked, or denied in any state;
 - f. Been refused renewal of registration as an athlete agent in any state;
 - g. Engaged in conduct resulting in imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student athlete or a sanction on an educational institution; or

- h. Engaged in conduct that adversely reflects on the applicant's credibility, honesty, or integrity.
- 3. In making a determination under subsection 2, the secretary of state shall consider:
 - a. How recently the conduct occurred;
 - b. The nature of the conduct and the context in which it occurred; and
 - c. Other relevant conduct of the applicant.
- 4. An athlete agent registered under subsection 1 may apply to renew the registration by submitting an application for renewal in a form prescribed by the secretary of state. The applicant shall sign the application for renewal under penalty of perjury and include current information on all matters required in an original application for registration.
- 5. An athlete agent registered under subsection 3 of section 9-15.2-04 may renew the registration by proceeding under subsection 4 or, if the registration in the other state has been renewed, by submitting to the secretary of state copies of the application for renewal in the other state and the renewed registration from the other state. The secretary of state shall renew the registration if the secretary of state determines:
 - a. The registration requirements of the other state are substantially similar to or more restrictive than this chapter; and
 - b. The renewed registration has not been suspended or revoked and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.
- 6. A certificate of registration or renewal of registration under this chapter is valid for two years.

9-15.2-06. Suspension, revocation, or refusal to renew registration.

- 1. The secretary of state may limit, suspend, revoke, or refuse to renew a registration of an individual registered under subsection 1 of section 9-15.2-05 for conduct that would have justified refusal to issue a certificate of registration under subsection 2 of section 9-15.2-05.
- 2. The secretary of state may suspend or revoke the registration of an individual registered under subsection 3 of section 9-15.2-04 or renewed under subsection 5 of section 9-15.2-05 for any reason for which the secretary of state could have refused to grant or renew registration or for conduct that would justify refusal to issue a certificate of registration under subsection 2 of section 9-15.2-05.

9-15.2-07. Temporary registration.

The secretary of state may issue a temporary certificate of registration as an athlete agent while an application for registration or renewal of registration is pending.

9-15.2-08. Registration and renewal fees.

An application for registration or renewal of registration as an athlete agent must be accompanied by a fee in the following amount:

1. Two hundred fifty dollars for an initial application for registration;
2. Two hundred fifty dollars for registration based on a certificate of registration issued by another state;
3. One hundred fifty dollars for an application for renewal of registration; or
4. One hundred fifty dollars for renewal of registration based on a renewal of registration in another state.

9-15.2-09. Required form of agency contract.

1. An agency contract must be in a record signed by the parties.
2. An agency contract must contain:
 - a. A statement that the athlete agent is registered as an athlete agent in this state and a list of any other states in which the agent is registered as an athlete agent;
 - b. The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the agent under the contract and any other consideration the agent has received or will receive from any other source for entering into the contract or providing the services;
 - c. The name of any person not listed in the agent's application for registration or renewal of registration which will be compensated because the athlete signed the contract;
 - d. A description of any expenses the athlete agrees to reimburse;
 - e. A description of the services to be provided to the athlete;
 - f. The duration of the contract; and
 - g. The date of execution.
3. Subject to subsection 7, an agency contract must contain a conspicuous notice in boldface type and in substantially the following form:

WARNING TO STUDENT-ATHLETE.

IF YOU SIGN THIS CONTRACT:

- (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;
- (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST

NOTIFY YOUR ATHLETIC DIRECTOR THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT; AND

- (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A STUDENT-ATHLETE IN YOUR SPORT.
4. An agency contract must be accompanied by a separate record signed by the student-athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing the contract may result in the loss of the athlete's eligibility to participate in the athlete's sport.
 5. A student-athlete or, if the athlete is a minor, the parent or guardian of the athlete may void an agency contract that does not conform to this section. If the contract is voided, any consideration received from the athlete agent under the contract to induce entering into the contract is not required to be returned.
 6. At the time an agency contract is executed, the athlete agent shall give the student-athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract and the separate acknowledgment required by subsection 4.
 7. If a student-athlete is a minor, an agency contract must be signed by the parent or guardian of the minor and the notice required by subsection 3 must be revised accordingly.

9-15.2-10. Notice to educational institution.

1. In this section, "communicating or attempting to communicate" means contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message.
2. Not later than seventy-two hours after entering an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the athlete is enrolled or at which the agent has reasonable grounds to believe the athlete intends to enroll.
3. Not later than seventy-two hours after entering an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete shall inform the athletic director of the educational institution at which the athlete is enrolled that the athlete has entered an agency contract and the name and contact information of the athlete agent.
4. If an athlete agent enters an agency contract with a student-athlete and the athlete subsequently enrolls at an educational institution, the agent shall notify the athletic director of the institution of the existence of the contract not later than seventy-two hours after the agent knew or should have known the athlete enrolled.

5. If an athlete agent has a relationship with a student-athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the institution, the agent shall notify the institution of the relationship not later than ten days after the enrollment if the agent knows or should have known of the enrollment and:
 - a. The relationship was motivated in whole or part by the intention of the agent to recruit or solicit the athlete to enter an agency contract in the future; or
 - b. The agent directly or indirectly recruited or solicited the athlete to enter an agency contract before the enrollment.
6. An athlete agent shall give notice in a record to the athletic director of any educational institution at which a student-athlete is enrolled before the agent communicates or attempts to communicate with:
 - a. The athlete or, if the athlete is a minor, a parent or guardian of the athlete, to influence the athlete or parent or guardian to enter into an agency contract; or
 - b. Another individual to have that individual influence the athlete or, if the athlete is a minor, the parent or guardian of the athlete to enter into an agency contract.
7. If a communication or attempt to communicate with an athlete agent is initiated by a student-athlete or another individual on behalf of the athlete, the agent shall notify in a record the athletic director of any educational institution at which the athlete is enrolled. The notification must be made not later than ten days after the communication or attempt.
8. An educational institution that becomes aware of a violation of this chapter by an athlete agent shall notify the secretary of state and any professional league or players association with which the institution is aware the agent is licensed or registered of the violation.

9-15.2-11. Student-athlete's right to cancel.

1. A student-athlete or, if the athlete is a minor, the parent or guardian of the athlete may cancel an agency contract by giving notice in a record of cancellation to the athlete agent not later than fourteen days after the contract is signed.
2. A student-athlete or, if the athlete is a minor, the parent or guardian of the athlete may not waive the right to cancel an agency contract.
3. If a student-athlete or parent or guardian cancels an agency contract, the athlete or parent or guardian is not required to pay any consideration under the contract or return any consideration received from the athlete agent to influence the athlete to enter into the contract.

9-15.2-12. Required records.

1. An athlete agent shall create and retain for five years records of the following:
 - a. The name and address of each individual represented by the agent;

- b. Each agency contract entered by the agent; and
 - c. The direct costs incurred by the agent in the recruitment or solicitation of each student-athlete to enter an agency contract.
2. Records described in subsection 1 are open to inspection by the secretary of state during normal business hours.

9-15.2-13. Prohibited conduct.

1. An athlete agent, with the intent to influence a student-athlete or, if the athlete is a minor, a parent or guardian of the athlete to enter an agency contract, may not take any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the agent:
 - a. Give materially false or misleading information or make a materially false promise or representation;
 - b. Furnish anything of value to the athlete before the athlete enters into the contract; or
 - c. Furnish anything of value to an individual other than the athlete or another registered athlete agent.
2. An athlete agent may not intentionally do any of the following or encourage any other individual to do any of the following on behalf of the agent:
 - a. Initiate contact, directly or indirectly, with a student-athlete or, if the athlete is a minor, a parent or guardian of the athlete, to recruit or solicit the athlete or parent or guardian to enter an agency contract unless registered under this chapter;
 - b. Fail to create or retain or to permit inspection of the records required by section 9-15.2-12;
 - c. Fail to register when required by section 9-15.2-03;
 - d. Provide materially false or misleading information in an application for registration or renewal of registration;
 - e. Predate or postdate an agency contract; or
 - f. Fail to notify a student-athlete or, if the athlete is a minor, a parent or guardian of the athlete, before the athlete or parent or guardian signs an agency contract for a particular sport that the signing may make the athlete ineligible to participate as a student-athlete in that sport.

9-15.2-14. Criminal penalty.

An athlete agent who violates section 9-15.2-13 is guilty of a class A misdemeanor.

9-15.2-15. Civil remedy.

1. An educational institution or student-athlete may bring an action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent in violation of this chapter. An educational institution or student-athlete is adversely affected by an act or omission of the agent only if, because of the act or omission, the institution or an individual who was a student-athlete at the time of the act or omission and enrolled in the institution:
 - a. Is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or
 - b. Suffers financial damage.
2. A plaintiff that prevails in an action under this section may recover damages, costs, and reasonable attorney's fees. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student-athlete and shall refund any consideration paid to the agent by or on behalf of the athlete.

9-15.2-16. Civil penalty.

The secretary of state may assess a civil penalty against an athlete agent not to exceed fifty thousand dollars for a violation of this chapter.

9-15.2-17. Uniformity of application and construction.

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

9-15.2-18. Relation to the Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. 7003(b).

SECTION 2. REPEAL. Chapter 9-15.1 of the North Dakota Century Code is repealed.

Approved March 30, 2017

Filed March 30, 2017

CORPORATIONS

CHAPTER 80

SENATE BILL NO. 2322

(Senators J. Lee, O. Larsen, Heckaman)
(Representatives Keiser, K. Koppelman, Delmore)

AN ACT to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the financial exploitation of vulnerable adults.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

Financial exploitation - Vulnerable adult.

1. As used in this section:

a. "Eligible adult" means an adult who is at least sixty-five years old or a vulnerable adult as defined in section 50-25.2-01.

b. "Financial exploitation" means:

(1) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an eligible adult; or

(2) Any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(a) Obtain control, through deception, intimidation, or undue influence, over the eligible adult's money, assets, or property, to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property; or

(b) Convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property.

c. "Qualified individual" means any agent, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

2. If a qualified individual reasonably believes financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall notify the department of human services and the commissioner.

3. If a qualified individual reasonably believes financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify a third party reasonably associated with the eligible adult or any other person permitted under state or federal law or rule, rules of a self-regulating organization, or customer agreement. Disclosure may not be made to a designated third party who is suspected of financial exploitation or other abuse of the eligible adult.
4. A qualified individual who in good faith and exercising reasonable care discloses information under this section is immune from administrative or civil liability that might otherwise result from disclosure or for any failure to notify the customer of the disclosure.
5. a. A broker-dealer or investment adviser may delay a transaction or disbursement of funds or securities from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:
 - (1) The broker-dealer or investment adviser reasonably believes the requested transaction or disbursement may result in financial exploitation of an eligible adult after initiating an internal review of the requested transaction or disbursement and the suspected financial exploitation; and
 - (2) The broker-dealer or investment adviser:
 - (a) Provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless a party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult, within two days after the requested transaction or disbursement;
 - (b) Notifies the department of human services and the commissioner within two days after the requested transaction or disbursement; and
 - (c) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult as necessary.
- b. Any delay of a transaction or disbursement authorized by this section expires upon the earlier of:
 - (1) A determination by the broker-dealer or investment adviser that the transaction or disbursement will not result in financial exploitation of the eligible adult; or
 - (2) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds or securities, unless the department of human services or the commissioner requests the broker-dealer or investment adviser extend the delay, in which case the delay expires within twenty-five business days after the date the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds or securities, unless the delay is terminated by either of the agencies or an order of a court of competent jurisdiction.

- c. A court of competent jurisdiction or the commissioner may enter an order extending the delay of the transaction or disbursement of funds or securities or may order other protective relief based on the broker-dealer, investment adviser, or other interested party's petition that initiated the delay under this section.
6. A broker-dealer or investment adviser who in good faith and exercising reasonable care complies with this section is immune from any administrative or civil liability that may otherwise arise from a delay in the transaction or disbursement in accordance with this section.
7. A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the department of human services and to law enforcement, either as part of a referral to the department or to law enforcement, or upon request of the department or law enforcement pursuant to an investigation. The records may include historical records and records relating to the most recent transaction that may comprise financial exploitation of an eligible adult. Any record provided to the department of human services or law enforcement under this section is an exempt record under chapter 44-04. This section does not limit or otherwise impede the authority of the commissioner to access or examine the books and records of a broker-dealer or investment adviser as otherwise provided by law.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 81

SENATE BILL NO. 2213

(Senator Casper)
(Representative Howe)

AN ACT to amend and reenact subsections 1, 2, and 3 of section 10-31-13 of the North Dakota Century Code, relating to annual reports of professional organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 2, and 3 of section 10-31-13 of the North Dakota Century Code are amended and reenacted as follows:

1. With respect to a professional organization in the form of a corporation:
 - a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-19.1 giving the name and residence address of each officer, director, and shareholder of the corporation at the time of filing of the report. With respect to shares, the report must include:
 - (1) 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;
 - (2) 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; and
 - (3) If there are minority owners, a statement of the issued shares, itemized by minority owner and nonminority owner.
 - b. Except as provided under subsection 4, the report must include a statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. The report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) ~~Signed by the president or vice president of the corporation as specified in subsection 2 of section 10-19.1-146;~~ and
 - (3) ~~Accompanied by the filing fee prescribed in chapter 10-19.1 section 10-19.1-147.~~
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the shareholders providing the corporation's professional service. The regulatory board may not charge a filing fee.

- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.
2. With respect to a professional organization in the form of a limited liability company:
 - a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-32.1 giving the name and residence address of all managers, governors, and members of the organization at the time of filing of the annual report.
 - b. Except as provided under subsection 4, the report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) ~~Signed by the president or vice president of the limited liability company as specified in subsection 2 of section 10-32.1-89;~~ and
 - (3) Accompanied by the filing fee prescribed in section 10-32.1-92.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the members providing the limited liability company's professional service. The regulatory board may not charge a filing fee.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.
 3. With respect to a professional organization in the form of a limited liability partnership:
 - a. The annual report filed with the secretary of state at the time specified for the filing of the report by chapter 45-22 must include the name and residence address of each partner of the organization at the time of filing of the annual report.
 - b. Except as provided under subsection 4, the annual report must include a statement that each partner holding voting partnership interests who practices in this state is licensed to render the same specific professional services as those for which the limited liability partnership was registered. The annual report must be:

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- (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) ~~Signed by a managing partner of the limited liability partnerships specified in subsection 2 of section 45-22-21.1;~~ and
 - (3) Accompanied by the filing fee prescribed in section 45-22-22.
- c. A copy of the annual report must be filed at the same time with the regulatory board that licenses the partners providing the limited liability partnership's professional service. The regulatory board may not charge a filing fee.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not exceeding twenty dollars per individual certified to be licensed by the regulating board.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 82

SENATE BILL NO. 2223

(Senators Nelson, Armstrong, Sorvaag)
(Representatives M. Johnson, Klemin, Schneider)

AN ACT to create and enact section 10-32.1-30.1 of the North Dakota Century Code, relating to sharing of profits and losses; to amend and reenact subsection 2 of section 10-32.1-15, section 10-32.1-30, subsection 2 of section 10-32.1-39, and sections 10-32.1-45, 10-32.1-54, 45-10.2-64, and 45-17-04 of the North Dakota Century Code, relating to limited liability company distributions and management and partnership transferable interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 10-32.1-15 of the North Dakota Century Code is amended and reenacted as follows:

2. The obligations of a limited liability company and its members to a person in the capacity of the person as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under ~~subdivision b of subsection 2~~ of section 10-32.1-45, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the capacity of the person as a transferee or dissociated member.

SECTION 2. AMENDMENT. Section 10-32.1-30 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-30. Sharing of and right to distributions before dissolution.

1. ~~Subject~~Except as provided in subsection 5 and subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05, any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.
2. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. The dissociation of a person does not entitle the person to a distribution.
3. A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in ~~subsection 3 of section 10-32.1-54,~~ a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the share of distributions of the person.

4. If a member or transferee becomes entitled to receive a distribution, then the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.
5. Notwithstanding subsection 1, subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05 and unless otherwise provided in the articles of organization or in an operating agreement, for a limited liability company created after July 31, 2017, any distributions among members and dissociated members made by a limited liability company before its dissolution and winding up must be in proportion to the value of the contributions of the members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.

SECTION 3. Section 10-32.1-30.1 of the North Dakota Century Code is created and enacted as follows:

10-32.1-30.1. Sharing of profits and loss.

Unless otherwise provided in the articles of organization, or in an operating agreement, the profits and losses of a limited liability company created after July 31, 2017, must be allocated among the members and among classes and series of members in proportion to the value of the contributions of the members.

²⁸ **SECTION 4. AMENDMENT.** Subsection 2 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~in~~

- a. Except as provided in subdivision b, in a member-managed limited liability company, the following rules apply:
 - a- (1) The management and conduct of the company are vested in the members.
 - b- (2) Each member has equal rights in the management and conduct of the activities of the company.
 - e- (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.
 - d- (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
 - e- (5) The operating agreement may be amended only with the consent of all members.
- b. Notwithstanding subdivision a, in a member-managed limited liability company created after July 31, 2017, the following rules apply:

²⁸ Section 10-32.1-39 was also amended by section 1 of Senate Bill No. 2159, chapter 83, section 2 of Senate Bill No. 2159, chapter 83, and section 3 of Senate Bill No. 2159, chapter 83.

- (1) The management and conduct of the company are vested in the members.
- (2) Unless otherwise provided in the articles of organization or in an operating agreement, each member possesses voting power in the management and conduct of the activities of the company in proportion to the interest of the member in distributions of the limited liability company before dissolution and winding up.
- (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the voting power of the transferable interest of the members.
- (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
- (5) The operating agreement may be amended only with the consent of all members.

SECTION 5. AMENDMENT. Section 10-32.1-45 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-45. Charging order.

1. On application by a judgment creditor of a member or transferee and following notice to the limited liability company of the application, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment.
2. A charging order constitutes a lien on the transferable interest of a judgment debtor and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.
- ~~2.3.~~ ~~To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection 1, the court may:~~
 - ~~a. Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and~~
 - ~~b. Make all other orders necessary to give effect to the charging order.~~
- ~~3.~~ ~~Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, then the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to section 10-32.1-44.~~
4. ~~At any time before foreclosure under subsection 3, the~~The member or transferee whose transferable interest is subject to a charging order ~~under subsection 4~~ may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
- ~~5.4.~~ ~~At any time before foreclosure~~extinguishment under subsection 3, a limited liability company or one or more members whose transferable interests are

not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

- 6-5. This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.
- 7-6. This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the transferable interest of the judgment debtor.
- a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries that the debtor member might have made, is available to the judgment creditor that is attempting to satisfy the judgment out of the judgment debtor's interest in the limited liability company.
- b. No creditor of a member or transferee has any right to obtain possession of or otherwise exercise legal or equitable remedies with respect to a property of the company.
7. This section applies to single member limited liability companies and limited liability companies with more than one member.

SECTION 6. AMENDMENT. Section 10-32.1-54 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-54. Distribution of assets in winding up limited liability activities of the company.

1. ~~In~~Except as provided in subsection 5, in winding up its activities, a limited liability company ~~must~~shall apply its assets to discharge its obligations to creditors, including members that are creditors.
2. After a limited liability company complies with subsection 1, any surplus must be distributed in the following order, subject to any charging order in effect under section 10-32.1-45:
 - a. To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and
 - b. In equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44.
3. If a limited liability company does not have sufficient surplus to comply with subdivision a of subsection 2, then any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.
4. All distributions made under subsections 2 and 3 must be paid in money.

5. a. Notwithstanding subsections 1 through 4, in winding up its activities a limited liability company created after July 31, 2017, shall apply its assets to discharge its obligations to creditors, including members that are creditors.
- b. After a limited liability company complies with subdivision a, any surplus must be distributed in the following order, subject to any charging order in effect under section 10-32.1-45 and unless otherwise provided in the articles of organization or an operating agreement:
 - (1) To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and
 - (2) In proportion to the value of the contributions of members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44.
- c. If a limited liability company does not have sufficient surplus to comply with paragraph 1 of subdivision b, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.
- d. All distributions made under subdivisions a and b must be paid in money unless otherwise provided in the articles of organization or in an operating agreement, or by the unanimous consent of the voting members.

SECTION 7. AMENDMENT. Section 45-10.2-64 of the North Dakota Century Code is amended and reenacted as follows:

45-10.2-64. (703) Rights of a creditor of partner or transferee Charging order.

1. On application to a court of competent jurisdiction by any by a judgment creditor of a partner or of a partner's transferee, the court may charge and following notice to the partnership of the application, a court of competent jurisdiction may enter a charging order against the transferable interest of the judgment debtor with payment of the for the unsatisfied amount of the judgment with interest.
 - a. To the extent so charged, the judgment creditor has only the rights of a transferee.
 - b. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.
 - c.
2. A charging order constitutes a lien on the transferable interest of the judgment debtor and requires the partnership to pay to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

3. The partner or transferee having a transferable interest subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
4. A partnership or partner having any transferable interest not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.
- 2-5. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.
- 3-6. This section provides the exclusive remedy by which a person seeking to enforce a judgment creditor against a partner or transferee may satisfy, in the capacity of a judgment with request to creditor, the judgment from the transferable interest of the judgment debtor.
 - a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner may have made, is available to the judgment creditor attempting to satisfy the judgment from the judgment debtor's interest in the partnership.
 - b. No creditor of a partner or transferee has a right to obtain possession or otherwise exercise legal or equitable remedies with respect to property of the partnership.

SECTION 8. AMENDMENT. Section 45-17-04 of the North Dakota Century Code is amended and reenacted as follows:

45-17-04. (504) Partner's transferable interest subject to charging order.

1. On application by a judgment creditor of a partner or of a partner's transferee and following notice to the partnership of such application, a court having jurisdiction may charge ~~enter a charging order against~~ the transferable interest of the judgment debtor ~~to satisfy for the unsatisfied amount of the judgment.~~ The court may appoint a receiver of the share of the distributions ~~due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.~~
2. A charging order constitutes a lien on the ~~judgment debtor's~~ transferable interest ~~in of a judgment debtor and requires the partnership to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.~~ The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.
3. At any time before foreclosure, an interest charged may be redeemed:
 - a. By the judgment debtor;
 - b. ~~With property other than partnership property, by one or more of the other partners; or~~

- ~~e. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged. The partner or transferee whose transferable interest is subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the order.~~
4. At any time before extinguishment under subsection 3, a partnership or one or more partners whose transferable interest are not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.
5. Chapters 45-13 through 45-21 do not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.
- 5-6. This section provides the exclusive remedy by which a person seeking to enforce a judgment creditor of against a partner or partner's transferee may satisfy a, in the capacity of a judgment out creditor, the judgment from the transferable interest of the judgment debtor's transferable interest in the partnership debtor.
- a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the partnership.
- b. No creditor of a partner or transferee has any right to obtain possession of or otherwise exercise legal or equitable remedies to a property of the partnership.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 83

SENATE BILL NO. 2159

(Senators Campbell, Laffen)
(Representatives Monson, D. Ruby, Trottier)

AN ACT to amend and reenact subdivision d of subsection 2 of section 10-32.1-39, paragraph 1 of subdivision d of subsection 3 of section 10-32.1-39, and paragraph 1 of subdivision q of subsection 4 of section 10-32.1-39 of the North Dakota Century Code, relating to management of a limited liability company; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹ **SECTION 1. AMENDMENT.** Subdivision d of subsection 2 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

- d. An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members, except member consent is not required for the grant of a lien on or security interest in all or substantially all of the company's property and assets, whether in the usual and regular course of the company's business, or for the transfer of any or all of the company's property to an organization, all of the ownership interests that are directly or indirectly owned through wholly owned organizations, by the company.

³⁰ **SECTION 2. AMENDMENT.** Paragraph 1 of subdivision d of subsection 3 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the company, with or without the good will, outside the ordinary course of the activities of the company, except member consent is not required for the grant of a lien on or security interest in all or substantially all of the company's property and assets, whether in the usual and regular course of the company's business, or for the transfer of any or all of the company's property to an organization, all of the ownership interests that are directly or indirectly owned through wholly owned organizations, by the company;

²⁹ Section 10-32.1-39 was also amended by section 2 of Senate Bill No. 2159, chapter 83, section 3 of Senate Bill No. 2159, chapter 83, and section 4 of Senate Bill No. 2223, chapter 82.

³⁰ Section 10-32.1-39 was also amended by section 1 of Senate Bill No. 2159, chapter 83, section 3 of Senate Bill No. 2159, chapter 83, and section 4 of Senate Bill No. 2223, chapter 82.

³¹ **SECTION 3. AMENDMENT.** Paragraph 1 of subdivision q of subsection 4 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the company, with or without the good will, outside the ordinary course of the activities of the company, except member consent is not required for the grant of a lien on or security interest in all or substantially all of the company's property and assets, whether in the usual and regular course of the company's business, or for the transfer of any or all of the company's property to an organization, all of the ownership interests that are directly or indirectly owned through wholly owned organizations, by the company;

SECTION 4. RETROACTIVE APPLICATION. This Act applies retroactively to cases arising after July 31, 2015.

Approved March 15, 2017

Filed March 16, 2017

³¹ Section 10-32.1-39 was also amended by section 1 of Senate Bill No. 2159, chapter 83, section 2 of Senate Bill No. 2159, chapter 83, and section 4 of Senate Bill No. 2223, chapter 82.

CHAPTER 84

SENATE BILL NO. 2276

(Senators Wardner, Armstrong)

AN ACT to amend and reenact subsection 7 of section 10-33-21, section 10-33-100, and subsection 4 of section 10-33-108 of the North Dakota Century Code, relating to the prohibition of the diversion of restricted assets and the priority of those assets in a dissolution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income. All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable generally accepted accounting principles and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets.

SECTION 2. AMENDMENT. Section 10-33-100 of the North Dakota Century Code is amended and reenacted as follows:

10-33-100. Procedure in dissolution.

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.
3. ~~Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 10-33-105.~~

SECTION 3. AMENDMENT. Subsection 4 of section 10-33-108 of the North Dakota Century Code is amended and reenacted as follows:

4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
 - a. Assets received and held for a special use or purpose must be distributed pursuant to subsection 2 of section 10-33-105;
 - b. The costs and expenses of the proceedings, including attorney's fees and disbursements;
 - b-c. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
 - e-d. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance coverage, as provided by law, at the time the injury was sustained;
 - d-e. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
 - e-f. Other claims duly proved and allowed.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 85

HOUSE BILL NO. 1048

(Legislative Management)
(Political Subdivision Taxation Committee)

AN ACT to amend and reenact section 10-33-124 of the North Dakota Century Code, relating to the certified nonprofit development corporation investment tax credit; to repeal section 57-38-01.17 of the North Dakota Century Code, relating to the certified nonprofit development corporation investment tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³² **SECTION 1. AMENDMENT.** Section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

10-33-124. Certified nonprofit development corporation - Application -- Income tax credit.

1. For the purposes of this section:
 - a. "Certified nonprofit development corporation" means a corporation organized under this chapter which meets the following requirements:
 - (1) Is certified by the secretary of state under this section;
 - (2) Invests a majority of its funds in primary sector businesses; and
 - (3) No part of the income is distributable to its members, directors, or officers.
 - b. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that, through a process employing knowledge and labor, adds value to a product produced for resale.
2. A corporation may apply to the secretary of state to become a certified nonprofit development corporation by submitting an application executed by an officer of the corporation containing:
 - a. The name of the corporation and the address of its principal executive office;
 - b. The names and addresses of the officers and directors of the corporation; and
 - c. A statement that the corporation has adopted a resolution to invest a majority of membership payments, dues, or contributions received in primary sector businesses. A copy of the resolution must be submitted with

³² Section 10-33-124 was also amended by section 3 of House Bill No. 1044, chapter 56.

- the application to the secretary of state together with the fees provided in section 10-33-140.
3. Upon receipt by the secretary of state of the completed application and fee, the secretary of state shall certify the applicant as a certified nonprofit development corporation.
 4. ~~a. A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty five percent of the amount paid.~~
 - ~~b. This credit may not be claimed by a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.~~
 - ~~c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.~~
 - ~~d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.~~
 5. ~~a. Within thirty days of the date on which a taxpayer buys membership in, or pays dues or contributes to, a certified nonprofit development corporation, the certified nonprofit development corporation must complete and file with the tax commissioner a form prescribed by the tax commissioner setting forth:
 - (1) The name, address, and social security number or federal employer identification number of the taxpayer making the payment;
 - (2) The dollar amount paid by the taxpayer;
 - (3) The date the certified nonprofit development corporation received the payment from the taxpayer;
 - (4) The name, address, and federal employer identification number of the certified nonprofit development corporation; and
 - (5) The signature and title of an officer authorized to act on behalf of the corporation.~~
 - ~~b. Two copies of this form must be provided to the taxpayer. To receive the credit, the taxpayer must attach one copy of the form to the taxpayer's income tax return.~~

SECTION 2. REPEAL. Section 57-38-01.17 of the North Dakota Century Code is repealed.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2016.

Approved March 21, 2017

Filed March 22, 2017

COUNTIES

CHAPTER 86

SENATE BILL NO. 2326

(Senator Laffen)

AN ACT to amend and reenact sections 11-09.1-05 and 40-05.1-06 of the North Dakota Century Code, relating to the authority of home rule counties and cities to levy certain taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-05. Powers.

After the filing with the secretary of state of a charter approved in reasonable conformity with this chapter, the county and its citizens may, if included in the charter and implemented through ordinances:

1. Acquire, hold, operate, and dispose of property within or without the county limits, and, subject to chapter 32-15, exercise the right of eminent domain for those purposes.
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.~~
3. To levy and collect property taxes and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements, and establish 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,

4. To levy and collect sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes, a county lodging tax, and a county restaurant tax. 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 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, with the exception of a county lodging or county restaurant tax, 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. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section.

- 3-5. Provide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees. However, after adoption of a home rule charter, a county elected office may not be eliminated or combined with another office except upon approval of a majority of the electors of the county voting upon the question at a primary or general election or pursuant to the county officer combination, separation, or redesignation procedures of chapter

11-10.2. A home rule charter may not diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term. This subsection does not authorize a county to redesignate the elected offices of sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.

- 4-6. Provide for all matters pertaining to county elections, except as to qualifications of electors.
- 5-7. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil and criminal penalties for violation of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare. However, this subsection does not confer any authority to regulate any industry or activity which is regulated by state law or by rules adopted by a state agency.
- 6-8. Lay out or vacate public grounds, and provide through its governing body for the construction, use, operation, designation, and regulation of a county road system.
- 7-9. Provide for zoning, planning, and subdivision of public or private property within the county limits but outside the zoning authority of any city or organized township.
- 8-10. Exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 9-11. Contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

The people of all counties coming within this chapter have the full right of self-government in all matters within the powers enumerated in this chapter. The statutes of this state, so far as applicable, continue to apply to counties, except as superseded by the charters of the counties or by ordinances passed pursuant to the charters.

SECTION 2. AMENDMENT. Section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-06. Powers.

From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; ~~to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements;~~ to contract debts, borrow money, issue bonds, warrants, and

other evidences of indebtedness; to establish charges for any city or other services; and to establish debt and mill levy limitations.

3. To levy and collect property taxes and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements, and establish 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 city at the same rate unless otherwise provided by law. The authority to levy taxes under this subsection does not include authority to impose income taxes.
- 3.4. To levy and collect excises, fees, charges, franchise and license taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a city lodging tax, and a city restaurant tax. For purposes of this section, any taxes imposed under this section 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. After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of this section is invalid to the extent it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform with this subsection does not affect the validity of any other portion of the charter or ordinance of the eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section. Sales and use taxes and gross receipts taxes levied under this section:

 - 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 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, with the exception of a city lodging or city restaurant tax, 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.
5. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.

- ~~4-6.~~ To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers.
- ~~5-7.~~ To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
- ~~6-8.~~ To provide for all matters pertaining to city elections, except as to qualifications of electors.
- ~~7-9.~~ To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
- ~~8-10.~~ To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
- ~~9-11.~~ To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
- ~~10-12.~~ To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
- ~~11-13.~~ To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
- ~~12.~~ To levy and collect franchise and license taxes for revenue purposes.
- ~~13-14.~~ To exercise in the conduct of its affairs all powers usually exercised by a corporation.
- ~~14-15.~~ To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
- ~~15-16.~~ To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.
- ~~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 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.~~

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

~~After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of subsection 16 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform to subsection 16 does not affect the validity of any other portion of the charter or ordinance 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.~~

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 87

SENATE BILL NO. 2193

(Senators Kreun, Luick, Sorvaag)
(Representatives Blum, Boschee, Mock)

AN ACT to amend and reenact section 11-15-33, subsection 2 of section 15-10-17, and section 40-20-05 of the North Dakota Century Code, relating to jurisdiction of law enforcement officers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-33 of the North Dakota Century Code is amended and reenacted as follows:

11-15-33. County law enforcement officer - Jurisdiction - Fresh pursuit.

1. A county law enforcement officer employed by a county has jurisdiction within that county and up to one thousand five hundred feet [457.2 meters] outside the county.
2. A county law enforcement officer in fresh pursuit may enter another county and may continue within that county in fresh pursuit to make an arrest, in compliance with a warrant or without a warrant under the conditions of section 29-06-15, if obtaining the aid of law enforcement officers having jurisdiction in that county would cause a delay permitting escape. As used in this section, "fresh pursuit" means fresh pursuit as defined in section 29-06-07.
3. The jurisdiction limits in subsection 1 do not apply to a county law enforcement officer acting pursuant to a joint powers agreement with another jurisdiction.

SECTION 2. AMENDMENT. Subsection 2 of section 15-10-17 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Authorize the employment of law enforcement officers having concurrent jurisdiction with other law enforcement officers on property owned or leased by the state board of higher education to enforce laws and regulations at its institutions, or as otherwise provided in this subsection.~~
 - a. A law enforcement officer employed by North Dakota state university has jurisdiction on all property owned or leased by the state board of higher education and property on and within the boundaries of the intersection of nineteenth avenue north and Dakota drive south to eighth avenue north, eighth avenue north east to tenth street north, tenth street north north to nineteenth avenue north, nineteenth avenue north west to Dakota drive.
 - b. A law enforcement officer employed by the university of North Dakota has jurisdiction on all property owned or leased by the state board of higher education and property on and within the boundaries of the intersection of demers avenue and north fifty-fifth street, north fifty-fifth street north to university avenue, university avenue east to north forty-second street.

north forty-second street north to gateway drive, gateway drive east to north columbia road, north columbia road south to tenth avenue north, tenth avenue north east to north twenty-fifth street, north twenty-fifth street south to sixth avenue north, sixth avenue north east to north twentieth street, north twentieth street south to fifth avenue north, fifth avenue north west to north twenty-third street, north twenty-third street south to university avenue, university avenue east to north twenty-first street, north twenty-first street south to dyke avenue, dyke avenue east to north washington street, north washington street south to demers avenue, and demers avenue west to north fifty-fifth street. Jurisdiction under this subdivision includes Grand Forks international airport.

- c. A law enforcement officer employed by the North Dakota state college of science has jurisdiction on all property owned or leased by the state board of higher education and property on and within the boundaries of the intersection of seventh avenue north and eleventh street north, eleventh street north to sixteenth avenue north, sixteenth avenue north west to fourth street north, and fourth street north south to seventh avenue north.
- d. A law enforcement officer employed by an institution under the control of the state board of higher education who is in "hot pursuit" may continue beyond the jurisdictional boundaries of each institution to make an arrest, in compliance with a warrant or without a warrant under the conditions of section 29-06-15, if obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subdivision, "hot pursuit" means the immediate pursuit of a person who is endeavoring to avoid arrest.
- e. The state board of higher education may enter a joint powers agreement with a political subdivision to enable law enforcement from the political subdivision and law enforcement from the institution to provide secondary response to each other outside the jurisdictional boundaries provided in this subsection.
- f. Notwithstanding any other provision of law or joint powers agreement, any misdemeanor or felony violation of law occurring in or on property owned or leased by the state board of higher education or within the extraterritorial jurisdiction must be filed in district court unless the primary law enforcement officer involved is not employed by the state board of higher education. An infraction or noncriminal offense occurring in or on property owned or leased by the state board of higher education or within the extraterritorial jurisdiction may be filed in municipal court.

SECTION 3. AMENDMENT. Section 40-20-05 of the North Dakota Century Code is amended and reenacted as follows:

40-20-05. Chief of police and police officers - Powers and duties - Hot pursuit.

1. ~~The chief of police shall perform such duties as shall be prescribed by the governing body for the preservation of the peace. The chief of police shall have the authority to may administer oaths to police officers under the chief's supervision. Within the city limits, and for a distance of one and one-half miles [2.41 kilometers] in all directions outside the city limits, the police officers and watchmen of the city shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of this state.~~

2. A police officer in "hot pursuit" may continue beyond the one and one-half mile [2.41 kilometerkilometers] limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of section 29-06-15, whenever if obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subsection, "hot pursuit" means the immediate pursuit of ~~a person who is an individual~~ endeavoring to avoid arrest. The jurisdiction limits in subsection 1 do not apply to a police officer acting pursuant to a joint powers agreement with another jurisdiction.
3. Police officers shall serve and execute any warrant, writ, process, order, or notice issued ~~to them~~ by a municipal judge within the city in any civil or criminal action or proceeding for or on account of a violation of any city ordinance or in any action or proceeding in which the city is a party or is interested beneficially. The police, within the limits prescribed in this section, may serve and execute all writs and process issued by justices in civil actions. In addition to the duties set out in this section, the police shall perform such other duties as may be prescribed by ordinance or statute.

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

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 88

SENATE BILL NO. 2160

(Senators Bekkedahl, Armstrong, Kannianen, G. Lee)
(Representatives Hatlestad, Longmuir)

AN ACT to amend and reenact sections 11-18-01 and 57-28-04 of the North Dakota Century Code, relating to the duties of a recorder and providing notice of foreclosure of tax liens; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-01 of the North Dakota Century Code is amended and reenacted as follows:

11-18-01. Recorder's duties - Recording and filing instruments - Abstracts

The recorder shall:

1. Keep a full and true record, in proper books or other storage media provided for that purpose, of each patent, deed, mortgage, bill of sale, security agreement, judgment, decree, lien, certificate of sale, and other instrument required to be filed or admitted to record, if the person offering the instrument for filing or recording pays to the recorder the fees provided by law for the filing or recording.
2. Endorse upon each instrument filed with the recorder for record or otherwise the date and the hour and minute of the day of the filing or recording.
3. When the instrument is recorded or filed, endorse on the instrument the book and page or document number, the date, and the hour and minute of the date when it was recorded or filed with the recorder.
4. ~~Prepare a security agreement abstract whenever any person requests the agreement and pays the required fee.~~

SECTION 2. AMENDMENT. Section 57-28-04 of the North Dakota Century Code is amended and reenacted as follows:

57-28-04. Service of notice of foreclosure of lien.

1. If the current assessment records show that a residential building is located on the property, the county auditor shall deliver the notice of foreclosure of tax lien to the sheriff who shall serve it or cause it to be served personally upon the owner, if known to be a resident of this state. If the owner is a nonresident of this state, the county auditor shall serve the notice by certified mail addressed to the owner at the owner's last-known post-office address and determine whether personal service upon any person is required under subsection 3. If the current assessment records show that no residential building is located on the property, the auditor shall serve the notice by certified mail addressed to the owner at the owner's last-known post-office address.

2. By March first, the county auditor shall request from the recorder and the clerk of the district court a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the property except a person whose only interest is in judgment creditors. Ownership does not include an easement or right of way recorded, or a mineral interest that was severed from the surface estate, before filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the tax lien relates, upon whom the notice of foreclosures must be served. The recorder and the clerk of the district court shall provide the county auditor with the requested lists by April fifteenth following the request.
3. ~~The notice must be served~~On or before June first, the county auditor shall serve the notice of tax lien foreclosure personally upon any person actually residing upon the property subject to tax lien and by certified mail upon any tenant or other person entitled to the possession of the property as may appear from the records of the recorder or clerk of the district court.
4. The county auditor shall serve the notice of foreclosure of tax lien upon each mortgagee, lienholder, and other person with an interest in the property except a person whose only interest is in a mineral interest that was severed from the surface estate before the filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the notice of foreclosure of tax lien relates, and upon whom personal service is not required by this section, as shown by the records of the recorder or the clerk of the district court of the county. The notice must be served by certified mail. If a mortgagee, lienholder, or other person entitled to notice under this subsection has an agent registered with the secretary of state for the purpose of accepting service, the notice required under this subsection must be served on that registered agent.
5. The expense of service of the notice, publication, and other foreclosure costs under this chapter in the amount of fifty dollars or actual costs whichever is higher must be added to the amount required to satisfy the tax lien. The auditor or sheriff shall make proof of service by mail by affidavit showing the names and addresses of all parties upon whom the notice was served with the date of mailing in each case and shall attach the registry, certification, and return receipts and file the affidavit and receipts with the original notice of foreclosure of tax lien. Service by publication under this chapter must be shown of record by filing of an affidavit of publication.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2016.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 89

HOUSE BILL NO. 1250

(Representatives Louser, Beadle, Vetter)
(Senators Casper, Meyer)

AN ACT to amend and reenact section 11-18-02.2 and paragraph 8 of subdivision a of subsection 3 of section 47-10-27 of the North Dakota Century Code, relating to property sales price disclosures; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³ **SECTION 1. AMENDMENT.** Section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

11-18-02.2. Statements of full consideration to be filed with ~~state board of equalization or recorder~~ - Procedure - Penalty.

1. Any grantee or grantee's authorized agent who presents a deed in the office of the county recorder shall certify on the face of the deed ~~any one of the following:~~
 - a. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the state board of equalization.
 - b. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the recorder.
 - e. A statement of the full consideration paid for the property conveyed.
- ~~d.~~b. A statement designating one of the exemptions in subsection 76 which the grantee believes applies to the transaction.
2. Any party who presents an affidavit of affixation to real property of a manufactured home in the office of the county recorder in accordance with section 47-10-27 and who acquired the manufactured home before the affixation of the manufactured home to the real property shall either contain in or present in addition to the affidavit of affixation ~~any one of the following:~~
 - a. A statement that the party has filed with the state board of equalization a report of the full consideration paid for the manufactured home before the affixation.
 - b. A statement that the party has filed with the recorder a report of the full consideration paid for the manufactured home before the affixation.
 - e. A statement of the full consideration paid by the party for the manufactured home before the affixation.

³³ Section 11-18-02.2 was also amended by section 1 of House Bill No. 1356, chapter 90.

3. The recorder may not record any deed unless the deed contains ~~one of the statements required by~~complies with subsection 1 or record any affidavit of affixation unless the affidavit contains ~~or is accompanied by one of the statements required by~~complies with subsection 2.
4. The recorder ~~shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in the recorder's office pursuant to subsection 1 or subsection 2.~~
5. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out this section, and the forms must contain a space for the explanation of special circumstances that may have contributed to the amount of the consideration.
- ~~6.~~5. For purposes of subsection 1, the word "deed" means an instrument or writing whereby any real property or interest therein is granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing that transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.
- ~~7.~~6. This section does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
 - a. Property owned or used by public utilities.
 - b. Property classified as personal property.
 - c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
 - d. A sale that resulted as a settlement of an estate.
 - e. All sales to or from a government or governmental agency.
 - f. All forced sales, mortgage foreclosures, and tax sales.
 - g. All sales to or from religious, charitable, or nonprofit organizations.
 - h. All sales when there is an indicated change of use by the new owners.
 - i. All transfer of ownership of property for which is given a quitclaim deed.
 - j. Sales of property not assessable by law.
 - k. Agricultural lands of less than eighty acres [32.37 hectares].
 - l. A transfer that is pursuant to a judgment.
- ~~8.~~7. Any person that, in the statements provided for in subsection 1 or subsection 2, willfully falsifies the consideration paid for the transferred real property or the manufactured home, as applicable, or interest therein ~~or that~~

~~falsely certifies that the person has filed a report of full consideration with the state board of equalization is guilty of a class B misdemeanor.~~

³⁴ **SECTION 2. AMENDMENT.** Paragraph 8 of subdivision a of subsection 3 of section 47-10-27 of the North Dakota Century Code is amended and reenacted as follows:

- (8) If the party executing the affidavit acquired the manufactured home before the affixation of the manufactured home to the real property, that party shall complete ~~one of the statements~~statement required by subsection 2 of section 11-18-02.2; and

Approved March 22, 2017

Filed March 23, 2017

³⁴ Section 47-10-27 was also amended by section 3 of House Bill No. 1219, chapter 261.

CHAPTER 90**HOUSE BILL NO. 1356**

(Representatives Dockter, Owens)

AN ACT to amend and reenact subsection 7 of section 11-18-02.2 of the North Dakota Century Code, relating to recording statements of full consideration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵ **SECTION 1. AMENDMENT.** Subsection 7 of section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

7. This section does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
 - a. Property owned or used by public utilities.
 - b. Property classified as personal property.
 - c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
 - d. A sale that resulted as a settlement of an estate.
 - e. ~~All sales to or from a government or governmental agency.~~
 - f. All forced sales, mortgage foreclosures, and tax sales.
 - ~~g-f.~~ All sales to or from religious, charitable, or nonprofit organizations.
 - ~~h-g.~~ All sales when there is an indicated change of use by the new owners.
 - ~~i-h.~~ All transfer of ownership of property for which is given a quitclaim deed.
 - j-i. Sales of property not assessable by law.
 - k-j. Agricultural lands of less than eighty acres [32.37 hectares].
 - l-k. A transfer that is pursuant to a judgment.
 - m-l. A transfer on death deed or revocation instrument authorized under chapter 30.1-32.1.

Approved March 22, 2017

Filed March 22, 2017

³⁵ Section 11-18-02.2 was also amended by section 1 of House Bill No. 1250, chapter 89.

CHAPTER 91

SENATE BILL NO. 2340

(Senators Meyer, Burckhard, Casper)
(Representatives Beadle, Louser, Delmore)

AN ACT to amend and reenact subsection 1 of section 11-18-05 of the North Dakota Century Code, relating to fees charged by a county recorder for filing mortgage disclosures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 11-18-05 of the North Dakota Century Code is amended and reenacted as follows:

1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, ~~tentwenty~~ dollars for the first page and three dollars for each additional page of documents containing one to six pages and sixty-five dollars for documents containing more than six pages plus three dollars for each additional page after the first twenty-five pages. In addition, for all documents recorded under this section that list more than ~~five~~ten sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index. Three dollars of the fee collected for ~~the first page of each instrument recorded under this subdivision must be placed in the document preservation fund.~~
 - (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.
 - (2) The printed, written, or typed words must be considered legible by the recorder before the page will be accepted for recording and, unless the form was issued by a government agency, must have a font size equal to or larger than ten point calibri.
 - (3) Each real estate instrument must have a legal description considered to be adequate by the recorder before such instrument will be accepted for recording.
 - (4) A space of at least ~~four inches by three and one-half inches [10.16 by 8.89 centimeters]~~ three inches [7.62 centimeters] must be provided ~~on across the top of~~ the first or last page of each instrument for the recorder's recording information. ~~If recording information can only be placed on the reverse side of an instrument a space of at least three inches [7.62 centimeters] is not provided across the top of the first page, the recorder shall add a page, and an additional page charge must be levied in accordance with the fee structure.~~
 - b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than ~~one instrument~~ ten instruments

previously recorded in the county in which recording is requested, ~~ten dollars for the first page and three dollars for each additional page plus a fee of twenty dollars for documents containing one to six pages, sixty-five dollars for documents containing more than six pages plus three dollars for each additional page after the first twenty-five pages, and three dollars for each such additional document number or book and page after the first ten referenced instruments.~~ In addition, for all documents recorded under this section which list more than ~~five~~ ten separate sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index. Three dollars of the fee collected for ~~the first page of~~ each instrument recorded under this subdivision must be placed in the document preservation fund.

- c. Plats, twenty dollars for twenty lots or fewer and fifty dollars for more than twenty lots.
- d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of ten dollars.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 92

HOUSE BILL NO. 1294

(Representatives Seibel, B. Anderson, C. Johnson, Laning, Lefor, Nathe, J. Nelson,
Rohr)
(Senators Klein, Unruh)

AN ACT to amend and reenact section 11-19.1-15, subsections 9 and 18 of section 23-02.1-01, sections 23-02.1-08, 23-02.1-21, and 23-02.1-22, subsection 2 of section 23-02.1-32, sections 23-06-02, 23-06-03, 23-06-04, 23-06-05, 23-06-06, 23-06-07, 23-06-08, 23-06-09, 23-06-10, 23-06-11, 23-06-12, 23-06-13, and 23-06-26, subsection 8 of section 23-06.6-13, section 30.1-28-06, subsection 4 of section 43-10-01, and sections 43-10-15.4, 43-10-21, and 43-10.1-02 of the North Dakota Century Code, relating to transportation and disposition upon death; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-15. Notice of next of kin, disposition of personal belongings - Disposition of body when next of kin cannot be found.

The coroner of the county in which a death is discovered shall take charge of the case and ensure that relatives or friends of the deceased individual, if known, are notified as soon as possible, giving details of the death and disposition of the deceased individual. If the relatives or friends of the deceased are unknown, the coroner shall dispose of the personal effects and body in the following manner:

1. After using such clothing as may be necessary in the ~~burial~~final disposition of the body, the remaining personal effects of the deceased must be turned over to law enforcement for appropriate disposition.
2. The remains must be:
 - a. Disposed of in accordance with section 23-06-14; or
 - b. ~~Buried~~Otherwise disposed of in accordance with the laws governing the burial of indigent persons within this state.

³⁶ **SECTION 2. AMENDMENT.** Subsections 9 and 18 of section 23-02.1-01 of the North Dakota Century Code are amended and reenacted as follows:

9. "Final disposition" means the entombment, burial, interment, cremation, whole-body donation to a school of medicine, removal from the state, or other disposition of a dead body or fetus.

³⁶ Section 23-02.1-01 was also amended by section 1 of House Bill No. 1292, chapter 187.

18. "Subregistrar" means a funeral ~~director~~practitioner or other suitable individual from a licensed funeral home who is appointed by the state registrar for the purpose of issuing ~~burial-transit~~final disposition-transit permits.

SECTION 3. AMENDMENT. Section 23-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-08. Duties of subregistrars.

A subregistrar may issue ~~burial-transit~~final disposition-transit permits for those counties served by the funeral home the subregistrar is employed by. The subregistrar or cemetery sexton shall file all completed ~~burial-transit~~final disposition-transit permits with the county recorder in the county where the final disposition took place within ten days after the date of ~~interment~~final disposition or within the time prescribed by the local board of health. The subregistrar is subject to the supervision and control of the state registrar and may be removed by the state registrar for reasonable cause. The subregistrar is subject to the penalties for neglect of duties as provided in section 23-02.1-32.

SECTION 4. AMENDMENT. Section 23-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-21. Permits.

1. The funeral ~~director~~practitioner who first obtains custody of a dead body or fetus shall obtain a ~~burial-transit~~final disposition-transit permit before final disposition or removal from this state of the body or fetus.
2. The ~~burial-transit~~final disposition-transit permits must be issued by the state registrar or a subregistrar and must be filed in the office of the county recorder where the final disposition occurs in accordance with the requirements of sections 23-02.1-19 and 23-02.1-20.
3. A ~~burial-transit~~final disposition-transit permit issued under the laws of another state which accompanies a dead body or fetus brought into this state is authority for final disposition of the body or fetus in this state.
4. A permit for disinterment and reinterment is required before disinterment of a dead body or fetus except as authorized by rules or otherwise provided by law. The permit must be issued by the state registrar to a ~~licensed embalmer~~funeral practitioner upon proper application.

SECTION 5. AMENDMENT. Section 23-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-22. Extension of time.

1. The state department of health may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for the extension of the periods of time prescribed in sections 23-02.1-19, 23-02.1-20, and 23-02.1-21 for the filing of death records, fetal death records, medical certification of death, and for the obtaining of ~~burial-transit~~final disposition-transit permits in cases in which compliance with the applicable prescribed period would result in undue hardship.
2. Regulations of the state department of health may provide for the issuance of a ~~burial-transit~~final disposition-transit permit under section 23-02.1-21 ~~prior~~

~~to before~~ the filing of a record of death or fetal death upon conditions designed to assure compliance with the purposes of this chapter in cases in which compliance with the requirement that the records be filed ~~prior to before~~ the issuance of the permit would result in undue hardship.

SECTION 6. AMENDMENT. Subsection 2 of section 23-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Any person who refuses to provide information required by this chapter;
- b. Any person who knowingly transports or accepts for transportation, interment, or other final disposition of a dead body or fetus without an accompanying final disposition-transit permit as provided in this chapter; or
- c. Any person who willfully neglects or violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon the person by this chapter;

is guilty of an infraction.

SECTION 7. AMENDMENT. Section 23-06-02 of the North Dakota Century Code is amended and reenacted as follows:

23-06-02. Custody of body.

The person charged with the duty of ~~burying~~final disposition of the body of a deceased person is entitled to the custody of such body for the purpose of ~~burying~~arranging for final disposition. When the coroner is required to hold an inquest, however, the coroner is entitled to the custody of the body until such inquest has been completed.

³⁷ **SECTION 8. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

23-06-03. Duty of ~~burial~~final disposition.

1. The duty of ~~burying~~final disposition of the body of a deceased individual devolves upon the following individuals in order of priority:
 - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the individual would otherwise have the duty of final disposition under this section;
 - b. The surviving husband or wife if the deceased was married ~~or, if,~~
 - c. If the deceased was not married but left kindred, upon one or more individuals in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician

³⁷ Section 23-06-03 was also amended by section 1 of House Bill No. 1338, chapter 188.

- may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
- d. The surviving parent or parents of the decedent, each having equal authority;
 - e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
 - f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
 - g. The grandparent or the grandparents of the decedent, each having equal authority;
 - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;
 - i. An individual who was acting as the guardian of the decedent with authority to make health care decisions for the decedent at the time of death;
 - j. An adult who exhibited special care and concern for the decedent;
 - k. An individual respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; or
 - l. The appropriate public or court authority, as required by law. For purposes of this subdivision, the appropriate public or court authority includes the county social service board of the county in which the death occurred if the individual dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred.
2. If there is only one individual in a degree of relationship to the decedent described in subsection 1, and a district court determines the person and the decedent were estranged at the time of death, the right to control and the duty of disposition devolves to the next degree of relationship under subsection 1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.

3. If an individual to whom the right to control and duty of disposition devolves under subsection 1, refuses to accept or declines to act upon the right or duty, that right and duty passes as follows:
 - a. To another individual with the same degree of relationship to the decedent as the individual refusing to accept or declining to act; or
 - b. To the individual in the next degree of relationship to the decedent under subsection 1.
4. If a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting the court make a determination in the matter. If the right to control and duty of disposition devolves to more than one individual with the same degree of relationship to the decedent and those individuals do not, by majority vote, make a decision regarding arrangements and final disposition and a district court has been petitioned to make a determination, the court shall consider the following factors in making a determination:
 - a. The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
 - b. The degree of the personal relationship between the decedent and each of the individuals in the same degree of relationship to the decedent;
 - c. The expressed wishes and directions of the decedent and the extent to which the decedent provided resources for the purpose of carrying out the wishes or directions; and
 - d. The degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.
5. If the individual who has the duty of ~~burial~~final disposition does not ~~bury~~arrange for final disposition of the body within the time required by this chapter, the individual next specified shall bury or otherwise dispose of the body within the requirements of this chapter.
- 3-6. If the deceased is not survived by an individual described by subsection 1 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, and is not survived by an individual described by subsection 1 and identified for financial responsibility within the county's general assistance policy, the county social service board of the county in which the deceased had residence for county general assistance purposes or, if residence cannot be established, the county social service board of the county in which the death occurs shall employ some person to arrange for and supervise the ~~burial or cremation~~final disposition. If the deceased was a resident or inmate of a public institution, the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the ~~burial or cremation~~final disposition. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The county social services board may provide for the use of a military casket or urn, if the

deceased was a veteran as defined in section 37-01-40, unless the additional cost exceeds the negotiated expenses of this section or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary casket. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

- 4-7. If the ~~person~~individual with the duty of ~~burial~~final disposition under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that person shall honor those instructions, to the extent reasonable and possible, to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 23-06-31, or a document of gift for an anatomical gift.
- 5-8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.

SECTION 9. AMENDMENT. Section 23-06-04 of the North Dakota Century Code is amended and reenacted as follows:

23-06-04. Time within which ~~burial or cremation~~final disposition must be made - Exceptions.

1. The dead body of a human being must be ~~buried or cremated~~disposed of by the person charged with that duty within eight days after the death of such person except when any of the following occur:
 1. a. The right to dissect the body is expressly conferred by law.
 2. b. The body is being carried through this state.
 3. c. The body is being removed from this state for the purpose of ~~burial or cremation~~final disposition in some other state.
 4. d. A permit is obtained from the local health officer or the state department of health allowing a longer time during which the body need not be ~~buried or cremated~~disposed. The permit shall state the additional length of time during which the body need not be ~~buried or cremated~~disposed.
 5. e. The body is being stored for an extended period of time in a vault determined suitable by the state department of health, but the body may not be stored in a vault for a period of more than eight days during the months of June through October unless a permit is obtained from the local health officer or the state department of health.

2. The date of ~~burial or cremation~~ final disposition must be the date of the committal service or date of placement in a storage vault or school of medicine.

SECTION 10. AMENDMENT. Section 23-06-05 of the North Dakota Century Code is amended and reenacted as follows:

23-06-05. Failure to burydispose within required time - Penalty.

Any person ~~who~~that fails to comply with or who violates any of the provisions of section 23-06-04, or ~~who~~that refuses or neglects promptly to obey any order or instruction of the local board of health, is guilty of a class B misdemeanor.

SECTION 11. AMENDMENT. Section 23-06-06 of the North Dakota Century Code is amended and reenacted as follows:

23-06-06. Neglect of burialfinal disposition - Penalty.

Every person upon ~~whom~~which the duty of making burialfinal disposition of the remains of a deceased person is imposed by law ~~who~~that omits to perform that duty as required in this chapter is guilty of a class B misdemeanor.

SECTION 12. AMENDMENT. Section 23-06-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06-07. Regulation of burialfinal disposition - Issuance of burial-transitfinal disposition-transit permit regulated.

The body of any ~~person~~individual whose death occurs in this state may not be interred, deposited in a vault or tomb, cremated, donated to a school of medicine, or otherwise disposed of as authorized by law, until a burial-transitfinal disposition-transit permit has been properly issued by a subregistrar. ~~A burial-transit permit may not be issued by any subregistrar until a complete and satisfactory certificate and return of the death has been filed with the state registrar.~~ If the certificate is incorrect or incomplete, the subregistrar may not issue the permit until it is corrected or completed. In the case of any death outside of this state, a burial-transitfinal disposition-transit permit issued in accordance with the law and the health regulations in force in the state where the death occurred, when accompanying a body shipped through or into this state, may be accepted with the same effect as a permit from a subregistrar. If the death occurred from some disease that is held to be communicable by the state department of health, the subregistrar shall refuse to issue a permit for the removal or other disposition of the body except under the conditions prescribed by the state department of health and the local board of health.

SECTION 13. AMENDMENT. Section 23-06-08 of the North Dakota Century Code is amended and reenacted as follows:

23-06-08. ~~Burial-transit~~Final disposition-transit permit - Contents.

The burial-transitfinal disposition-transit permit must be on the form prescribed by the state registrar of vital statistics, must be signed by the subregistrar issuing it, and may be limited to a statement by the subregistrar showing:

1. That a satisfactory death record has been filed with the state registrar as required by law.
2. That permission is granted to inter, remove, or otherwise dispose of as authorized by law the body of the deceased.

3. The name, age, ~~and sex,~~ ~~and the cause of death~~ of the deceased and any other necessary details.

SECTION 14. AMENDMENT. Section 23-06-09 of the North Dakota Century Code is amended and reenacted as follows:

23-06-09. Disposition of ~~burial-transit~~final disposition-transit permit.

The ~~undertaker~~funeral practitioner, or ~~person~~individual acting as ~~undertaker~~funeral practitioner, shall secure the ~~burial-transit~~final disposition-transit permit from the subregistrar. The ~~undertaker~~funeral practitioner, or person acting as ~~undertaker~~funeral practitioner, shall deliver such permit to the sexton or person in charge of the place of ~~burial~~final disposition before interring the body, cremating the body, donating the body to a medical school, or otherwise disposing of the body as authorized by law, or shall attach it to the box containing the corpse when the same is shipped by any transportation company. Such permit must be accepted by the sexton or person in charge as authority for the ~~interment~~final disposition of the body. A body may not be accepted for carriage by a common carrier unless the permit is attached as required in this section.

SECTION 15. AMENDMENT. Section 23-06-10 of the North Dakota Century Code is amended and reenacted as follows:

23-06-10. Sextons to endorse and return ~~burial-transit~~final disposition-transit permit - Record of burials.

Each sexton or person in charge of the burial ground shall endorse the date of interment upon the ~~burial-transit~~final disposition-transit permit over the person's signature, and return the ~~burial-transit~~final disposition-transit permit to the ~~subregistrar~~county recorder. The subregistrar or sexton shall file all completed permits, so endorsed, with the county recorder within ten days after the date of interment or within the time prescribed by the local board of health.

The sexton shall keep a record of all interments made in the premises under the sexton's charge, stating the name of the deceased ~~person~~individual, the place of death, the date of burial, and the name and address of the ~~undertaker~~ or funeral ~~director~~practitioner. Such record at all times must be open to public inspection.

In the absence of a sexton, the funeral director making the burial shall endorse and return the ~~burial-transit~~final disposition-transit permit to the subregistrar.

SECTION 16. AMENDMENT. Section 23-06-11 of the North Dakota Century Code is amended and reenacted as follows:

23-06-11. Burial without ~~burial-transit~~final disposition-transit permit - Penalty.

It is unlawful for a person, acting as an ~~undertaker~~ funeral practitioner, to inter, remove, or otherwise dispose of as authorized by law the body of any deceased ~~person~~individual without having received a ~~burial-transit~~final disposition-transit permit.

SECTION 17. AMENDMENT. Section 23-06-12 of the North Dakota Century Code is amended and reenacted as follows:

23-06-12. Transporting body without ~~burial-transit~~final disposition-transit permit.

It is unlawful for a transportation company or common carrier to transport, or accept for transportation, the body of any deceased ~~person~~individual unless that body is accompanied by a ~~burial-transit~~final disposition-transit permit issued in accordance with the provisions of this chapter.

SECTION 18. AMENDMENT. Section 23-06-13 of the North Dakota Century Code is amended and reenacted as follows:

23-06-13. Dissection - When allowed.

The dead body of a human being may be dissected:

1. When the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest;
2. ~~When~~If the ~~husband, wife~~spouse, or one of the next of kin of a deceased ~~person~~individual, charged by law with the duty of ~~burial~~final disposition, authorizes such dissection for the purposes of ascertaining the cause of death; or
3. When permission has been given therefor by deceased.

SECTION 19. AMENDMENT. Section 23-06-26 of the North Dakota Century Code is amended and reenacted as follows:

23-06-26. Purchasing body forbidden - Penalty.

Every person who purchases or who receives, except for the purpose of ~~burial~~final disposition, any dead body of a human being, knowing that the same has been removed contrary to the provisions of this chapter, is guilty of a class C felony.

SECTION 20. AMENDMENT. Subsection 8 of section 23-06.6-13 of the North Dakota Century Code is amended and reenacted as follows:

8. Subject to subsection 9 of section 23-06.6-10 and section 23-06.6-22, the rights of the person to which a part passes under section 23-06.6-10 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, whole-body donation to a school of medicine, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 23-06.6-11, upon the death of the donor and before embalming, burial, whole-body donation to a school of medicine, or cremation, shall cause the part to be removed without unnecessary mutilation.

SECTION 21. AMENDMENT. Section 30.1-28-06 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-06. (5-306) Termination of guardianship.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, except, the guardian may arrange for a deceased ward's ~~burial~~final disposition and refer the ward's estate to probate, if no other person is available to perform those acts, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 30.1-28-07. Testamentary appointment under an informally probated will terminates if the will is

later denied probate in a formal proceeding. Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the ward.

SECTION 22. AMENDMENT. Subsection 4 of section 43-10-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Final disposition" means the entombment, burial in a cemetery, or cremation, removal from the state, or whole-body donation to a school of medicine of a dead human body.

SECTION 23. AMENDMENT. Section 43-10-15.4 of the North Dakota Century Code is amended and reenacted as follows:

43-10-15.4. Intern embalmer - Application - Qualifications.

The board shall issue a certificate of registration as an intern embalmer to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by a fee not to exceed fifty dollars, and who furnishes sufficient evidence to the board that the applicant:

1. Is at least eighteen years of age;
2. Is of good moral character; and
3. Has completed an accredited four-year high school course of study and ~~two years~~one year of accredited college or university studies; ~~and~~
4. ~~Has graduated from an accredited college of mortuary science.~~

SECTION 24. AMENDMENT. Section 43-10-21 of the North Dakota Century Code is amended and reenacted as follows:

43-10-21. Definition.

As used in sections 43-10-21 through 43-10-24, the term "funeral establishment" ~~shall mean~~means a place of business situated at a specific street address or location, and used in the care and preparation for burial, transportation, or other disposition of dead human bodies, or used for the purpose of conducting funeral services. ~~A branch establishment is a funeral establishment and must be independently licensed.~~

SECTION 25. AMENDMENT. Section 43-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-02. Pre-need funeral service contracts.

A person may not engage in the sale or execution of a pre-need funeral service contract unless that person is the operator, agent, employee, or manager of a licensed funeral establishment or cemetery association. As part of the sale of a pre-need funeral service contract, the seller shall inform the purchaser of the extent to which the person with the duty of burial~~final disposition~~ under section 23-06-03 might be bound by any pre-need funeral arrangements.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 93**SENATE BILL NO. 2171**

(Senators Burckhard, Campbell, Kannianen)
(Representatives Maragos, Pyle, Toman)

AN ACT to amend and reenact section 11-27-02 of the North Dakota Century Code, relating to the notice requirements for the sale of property at a public sale.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-27-02 of the North Dakota Century Code is amended and reenacted as follows:

11-27-02. Notice of sale when property sold at public sale.

Upon the resolution of the board of county commissioners authorizing the sale of county property at public sale, the county auditor shall cause to be published in the official county newspaper once each week for ~~three~~two consecutive weeks a notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held. The notice ~~shall~~must specify whether the bids are to be received at auction or as sealed bids as determined by the board.

Approved March 22, 2017

Filed March 22, 2017

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 94

HOUSE BILL NO. 1060

(Representative Meier)
(Senator Mathern)

AN ACT to create and enact two new subdivisions to subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks requested by the department of commerce for volunteers and employees providing services through the department and by the state court administrator for guardians ad litem.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁸ **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 department of commerce for volunteers and employees providing services through eligible organizations, as determined by the commissioner of commerce.

SECTION 2. 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 court administrator for a guardian ad litem who provides direct services to youth.

Approved April 13, 2017

Filed April 13, 2017

³⁸ Section 12-60-24 was also amended by section 1 of Senate Bill No. 2131, chapter 96, section 7 of Senate Bill No. 2327, chapter 199, section 1 of House Bill No. 1087, chapter 286, section 1 of House Bill No. 1132, chapter 95, and section 1 of Senate Bill No. 2129, chapter 409.

CHAPTER 95

HOUSE BILL NO. 1132

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

AN ACT to amend and reenact subdivision m of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to completion of criminal background checks of employees and contractors of job service North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁹ **SECTION 1. AMENDMENT.** Subdivision m of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- m. Job service North Dakota for ~~aall employees, final applicant~~applicants for a ~~specified occupation employment~~ with job service as ~~designated by the executive director, and contractors with access to federal tax information.~~

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

Approved March 2, 2017

Filed March 3, 2017

³⁹ Section 12-60-24 was also amended by section 1 of House Bill No. 1060, chapter 94, section 1 of Senate Bill No. 2131, chapter 96, section 7 of Senate Bill No. 2327, chapter 199, section 1 of House Bill No. 1087, chapter 286, and section 1 of Senate Bill No. 2129, chapter 409.

CHAPTER 96

SENATE BILL NO. 2131

(Senators Burckhard, D. Larson, Oban)
(Representatives D. Anderson, Mitskog, Paur)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and section 43-26.1-05.1 of the North Dakota Century Code, relating to criminal history record checks by the North Dakota board of physical therapy for physical therapist and physical therapist assistant applicants and licensees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁰ **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 North Dakota board of physical therapy for physical therapist and physical therapist assistant applicants and for licensees under investigation, except that criminal history record checks need not be made unless required by the board.

⁴¹ **SECTION 2.** Section 43-26.1-05.1 of the North Dakota Century Code is created and enacted as follows:

43-26.1-05.1. Use of criminal history record checks.

The board may require a physical therapy or physical therapy assistant applicant, or a licensee under investigation, to submit to a statewide and nationwide criminal history record check. The criminal history record check must be conducted in the manner provided by section 12-60-24. The criminal history record check is an exempt record. All costs associated with a criminal history record check performed under this section are the responsibility of the applicant or licensee.

Approved March 22, 2017

Filed March 22, 2017

⁴⁰ Section 12-60-24 was also amended by section 1 of House Bill No. 1060, chapter 94, section 7 of Senate Bill No. 2327, chapter 199, section 1 of House Bill No. 1087, chapter 286, section 1 of House Bill No. 1132, chapter 95, and section 1 of Senate Bill No. 2129, chapter 409.

⁴¹ Section 43-26.1-05.1 was amended by section 23 of House Bill No. 1015, chapter 14.

CRIMINAL CODE

CHAPTER 97

SENATE BILL NO. 2042

(Legislative Management)
(Human Services Committee)

AN ACT to amend and reenact sections 5-01-05.1, 12.1-01-04, 12.1-04-06, 12.1-04.1-02, 12.1-04.1-03, 12.1-04.1-04, 12.1-04.1-05, 12.1-04.1-06, 12.1-04.1-07, 12.1-04.1-08, 12.1-04.1-10, 12.1-04.1-11, 12.1-04.1-12, 12.1-04.1-13, 12.1-04.1-14, 12.1-04.1-15, 12.1-04.1-22, 12.1-04.1-23, 25-01-01, 25-03.1-04, 25-03.1-08, 25-03.1-10, 25-03.1-11, 25-03.1-18.1, 32-03-48, and 43-41-07, subdivision b of subsection 1 of section 43-48-15, sections 49-10.1-05, 50-25.1-03, 50-25.2-03, and 62.1-01-01, subdivisions b and c of subsection 1 of section 62.1-02-01, and subdivision b of subsection 1 of section 62.1-02-01.2 of the North Dakota Century Code, relating to references to mental health professionals and licensure of social workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

5-01-05.1. Public intoxication - Assistance - Medical care.

A peace officer has ~~authority to~~ may take any apparently intoxicated ~~person~~ individual to the ~~person's~~ individual's home, to a local hospital, to a detoxification center, or, whenever that ~~person~~ individual constitutes a danger to that ~~person~~ individual or others, to a jail ~~for purposes of detoxification~~. A ~~duly licensed physician~~ tier 1b mental health professional, as defined under section 25-01-01, of a local hospital or a ~~licensed addiction counselor of a detoxification center~~ has ~~authority to~~ may hold that ~~person~~ individual for treatment up to seventy-two hours. That intoxicated ~~person~~ individual may not be held in jail because of intoxication more than twenty-four hours. An intoxicated ~~person~~ individual may not be placed in a jail unless a jailer is constantly present ~~within hearing distance~~ monitoring the individual and medical services are provided ~~when~~ if the need is indicated. Upon placing that ~~person~~ individual in jail, or if the ~~person~~ individual is admitted ~~into~~ to a hospital or detoxification center, upon admission, the peace officer shall make a reasonable effort to notify the intoxicated ~~person's~~ individual's family as soon as possible. Any additional costs incurred by the city, county, ambulance service, or medical service provider on account of an intoxicated ~~person~~ individual ~~shall be~~ are recoverable from that ~~person~~ individual.

SECTION 2. AMENDMENT. Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. General definitions.

As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
 2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
 3. "Actor" includes, where relevant, a person guilty of an omission.
 4. "Bodily injury" means any impairment of physical condition, including physical pain.
 5. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.
 6. "Dangerous weapon" means, ~~but is not limited to;~~ includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon ~~which~~ that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
 7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
 8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
 9. ~~Repealed by S.L. 1975, ch. 116, § 33.~~
 - 40- "Firearm" means any weapon ~~which~~ that will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
- 44-10. "Force" means physical action.
- 42-11. "Government" means:
- a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the ~~foregoing state or any~~ political subdivision of the state, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function; and

- d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
- ~~13-12.~~ "Governmental function" includes any activity ~~which~~that one or more public servants are legally authorized to undertake on behalf of government.
- ~~14-13.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.
- ~~15-14.~~ "Included offense" means an offense:
- a. ~~Which~~That is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. ~~Which~~That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. ~~Which~~That differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
- ~~16-15.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- ~~17-16.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
- ~~18-17.~~ "Local" means of or pertaining to any political subdivision of the state.
- ~~19-18.~~ "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable individual, with due consideration of the totality of circumstances.
- ~~20-19.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
- ~~21-20.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.
- ~~22-21.~~ "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
- ~~23-22.~~ "Omission" means a failure to act.
- ~~24-23.~~ As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to

designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government ~~which~~that may lawfully own property in this state.

~~25-24.~~ "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.

~~26.~~ "Property" ~~includes both real and personal property.~~

~~27-25.~~ "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, ~~but the~~. The term does not include witnesses.

~~28-26.~~ "Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood ~~that~~ a person ~~wheth~~that committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.

~~29-27.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

~~30-28.~~ "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.

~~31-29.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.

~~32-30.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.

~~33.~~ "Writing" ~~includes printing, typewriting, and copying.~~

~~Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.~~

31. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

SECTION 3. AMENDMENT. Section 12.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-06. Examination - Temporary commitment.

Whenever there is reason to doubt the defendant's fitness to proceed, the court may order the detention of the defendant for the purpose of an examination by a ~~psychiatrist or a licensed psychologist~~ tier 1a mental health professional. The detention must be in the least restrictive appropriate setting, including the state hospital, the life skills and transition center, or other suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu of detention, the court may allow the defendant to remain in the defendant's present residential setting or other suitable residential setting for the purpose of evaluation by a suitable facility or personnel, subject to any reasonable limitation the court may impose. A human service center may not be considered a suitable facility and may not be considered suitable personnel under this section unless the court is aware that an inquiry ~~has been~~ was made ~~prior to~~ before the court ~~ordering~~ ordered the evaluation to ensure that appropriate resources exist at the human service center being ordered to conduct the evaluation. The court, by subsequent order and for good cause shown, may extend the detention for a period not to exceed thirty additional days. While the defendant is detained, the defendant's legal counsel, family, and others necessary to assist in the defendant's case ~~shall~~ must have reasonable opportunity to examine and confer with the defendant.

SECTION 4. AMENDMENT. Section 12.1-04.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-02. Court authorization of state-funded mental health services for certain defendants.

A defendant who is unable to pay for the services of a tier 1a mental health professional, and to whom those services are not otherwise available, may apply to the court for assistance. Upon a showing of a likely need for examination on the question of lack of criminal responsibility or lack of requisite state of mind as a result of the defendant's mental condition, the court shall authorize reasonable expenditures from public funds for the defendant's retention of the services of one or more tier 1a mental health professionals. Upon request by the defendant, the application and the proceedings on the application must be ex parte and in camera, but any order under this section authorizing expenditures must be made part of the public record.

SECTION 5. AMENDMENT. Section 12.1-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-03. Notice of defense of lack of criminal responsibility.

1. If the defendant intends to assert the defense of lack of criminal responsibility, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court. The notice must indicate whether the defendant intends to introduce at trial evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense.
2. The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.
3. If the defendant fails to give notice in accordance with this section, lack of criminal responsibility may not be asserted as a defense.

SECTION 6. AMENDMENT. Section 12.1-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-04. Notice regarding expert testimony on lack of state of mind as element of alleged offense.

1. If the defendant intends to introduce at trial evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense to show that the defendant lacked the state of mind required for the alleged offense, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court.
2. The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.

SECTION 7. AMENDMENT. Section 12.1-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-05. Examination at request of prosecuting attorney.

1. If the defendant has given notice under section 12.1-04.1-03 or 12.1-04.1-04 of intent to introduce evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense, the court, upon application by the prosecuting attorney and after opportunity for response by the defendant, shall order that the defendant be examined by one or more tier 1a mental health professionals retained by the prosecuting attorney. The court shall include in the order provisions as to the time, place, and conditions of the examination.
2. If the parties agree to examination of the defendant by a tier 1a mental health professional retained by the prosecuting attorney without order of the court, sections 12.1-04.1-06, 12.1-04.1-07, 12.1-04.1-08, 12.1-04.1-10, 12.1-04.1-11, 12.1-04.1-12, 12.1-04.1-13, 12.1-04.1-14, and 12.1-04.1-15 apply to that examination.

SECTION 8. AMENDMENT. Section 12.1-04.1-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-06. Explanation to defendant.

At the beginning of each examination conducted under section 12.1-04.1-05, the tier 1a mental health professional shall inform the defendant that the examination is being made at the request of the prosecuting attorney; the purpose of the examination is to obtain information about the defendant's mental condition at the time of the alleged offense; and information obtained from the examination may be used at trial and, if the defendant is found not guilty by reason of lack of criminal responsibility, in subsequent proceedings concerning commitment or other disposition.

SECTION 9. AMENDMENT. Section 12.1-04.1-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-07. Scope of examination.

An examination of the defendant conducted under section 12.1-04.1-05 may consist of such interviewing, clinical evaluation, and psychological testing as the tier 1a mental health professional considers appropriate, within the limits of nonexperimental, generally accepted medical, psychiatric, or psychological practices.

SECTION 10. AMENDMENT. Section 12.1-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-08. Recording of examination.

1. An examination of the defendant conducted under section 12.1-04.1-05 must be audio-recorded and, if ordered by the court, video-recorded. The manner of recording may be specified by rule or by court order in individual cases.
2. Within seven days after completion of an examination conducted under section 12.1-04.1-05, the tier 1a mental health professional conducting the examination shall deliver a copy of the recording of the examination, under seal, to the court and a copy of the recording to the defendant. The recording may not be disclosed except in accordance with this chapter.

SECTION 11. AMENDMENT. Section 12.1-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-10. Reports by tier 1a mental health professionals and expert witnesses.

A tier 1a mental health professional retained by the prosecuting attorney and a tier 1a mental health professional whom the defendant intends to call to testify at trial shall prepare a written report concerning any examination of the defendant and other pretrial inquiry by or under the supervision of the tier 1a mental health professional. Any other individual whom either party intends to call at trial as an expert witness on any aspect of the defendant's mental condition shall prepare a written report. A report under this section must contain:

1. The specific issues addressed.
2. The identity of individuals interviewed and records or other information used.
3. The procedures, tests, and techniques used.
4. The date and time of examination of the defendant, the explanation concerning the examination given to the defendant, and the identity of each individual present during an examination.
5. The relevant information obtained and findings made.
6. Matters concerning which the mental health professional was unable to obtain relevant information and the reasons therefor.
7. The conclusions reached and the reasoning on which the conclusions were based.

SECTION 12. AMENDMENT. Section 12.1-04.1-11 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-11. Exchange of reports and production of documents.

Not less than fifteen days before trial, the prosecuting attorney shall furnish to the defendant reports prepared pursuant to section 12.1-04.1-10, and the defendant shall furnish to the prosecuting attorney reports by each tier 1a mental health professional or other expert on any aspect of the defendant's mental condition whom the defendant intends to call at trial. Upon application by either party and after hearing, the court may require production of documents prepared, completed, or used in the examination or inquiry by the tier 1a mental health professional or other expert.

SECTION 13. AMENDMENT. Section 12.1-04.1-12 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-12. Use of reports at trial.

Use at trial of a report prepared by a tier 1a mental health professional or other expert is governed by the North Dakota Rules of Evidence. A report of a tier 1a mental health professional or other expert furnished by the defendant pursuant to section 12.1-04.1-10 may not be used at trial unless the tier 1a mental health professional or other expert who prepared the report has been called to testify by the defendant.

SECTION 14. AMENDMENT. Section 12.1-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-13. Notice of expert witnesses.

Not less than twenty days before trial, each party shall give written notice to the other of the name and qualifications of each tier 1a mental health professional or other individual the respective party intends to call as an expert witness at trial on the issue of lack of criminal responsibility or requisite state of mind as an element of the crime charged. For good cause shown, the court may permit later addition to or deletion from the list of individuals designated as expert witnesses.

SECTION 15. AMENDMENT. Section 12.1-04.1-14 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-14. Use of evidence obtained from examination.

1. Except as provided in subsection 2 and in sections 12.1-04.1-09 and 12.1-04.1-26, information obtained as a result of examination of a defendant by a tier 1a mental health professional conducted under section 12.1-04.1-05 is not admissible over objection of the defendant in any proceeding against the defendant.
2. Subject to the limitation in section 12.1-04.1-15, information obtained from an examination of the defendant by a tier 1a mental health professional conducted under section 12.1-04.1-05 is admissible at trial to rebut evidence introduced by the defendant obtained from an examination of the defendant by a tier 1a mental health professional or to impeach the defendant on the defendant's testimony as to mental condition at the time of the alleged offense.

SECTION 16. AMENDMENT. Section 12.1-04.1-15 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-15. Use of recording of examination.

Except as provided in section 12.1-04.1-09, recording of an examination of the defendant concerning the defendant's mental condition at the time of the alleged offense may be referred to or otherwise used only on cross-examination for the purpose of impeachment of the tier 1a mental health professional who conducted the examination and then on redirect examination of that witness to the extent permitted by the North Dakota Rules of Evidence. The defendant must make the recording available to the prosecuting attorney before any use of it pursuant to this section. If the recording is so used, this section does not preclude its use for the purpose of impeachment of the defendant in any other criminal, civil, or administrative proceeding.

SECTION 17. AMENDMENT. Section 12.1-04.1-22 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-22. Initial order of disposition - Commitment to treatment facility - Conditional release - Discharge.

1. The court shall conduct a dispositional hearing within ninety days after an order of commitment pursuant to section 12.1-04.1-21 is entered, unless the court, upon application of the prosecuting attorney or the individual committed, for cause shown, extends the time for the hearing. The court shall enter an initial order of disposition within ten days after the hearing is concluded.
2. In a proceeding under this section, unless excused by order of the court, defense counsel at the trial shall represent the individual committed.
3. If the court finds that the individual lacks sufficient financial resources to retain the services of a tier 1a mental health professional and that those services are not otherwise available, ~~it~~the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more tier 1a mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition.
4. In a proceeding under this section, the individual committed has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:
 - a. If the court finds that the individual is not mentally ill or defective or that there is not a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act, ~~it~~the court shall order the ~~person~~individual discharged from further constraint under this chapter.
 - b. If the court finds that the individual is mentally ill or defective and that there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act of violence threatening another individual with bodily injury or inflicting property damage and that the individual is not a proper subject for conditional release, ~~it~~the court shall order the individual committed to a treatment facility for custody and treatment. If the court finds that the risk that the individual will commit an act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment if the individual is conditionally released and that necessary supervision and treatment are available, ~~it~~the court shall order the

~~person~~individual released subject to conditions it considers appropriate for the protection of society.

- c. If the court finds ~~that~~ the individual is mentally ill or defective and ~~that~~ there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act not included in subdivision b, ~~if~~the court shall order the individual to report to a treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

SECTION 18. AMENDMENT. Section 12.1-04.1-23 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-23. Terms of commitment - Periodic review of commitment.

1. Unless an order of commitment of an individual to a treatment facility provides for special terms as to custody during commitment, the director or superintendent of the treatment facility may determine from time to time the nature of the constraints necessary within the treatment facility to carry out the court's order. In an order of commitment, the court may authorize the director or superintendent to allow the individual a limited leave of absence from the treatment facility on terms the court may direct.
2. In an order of commitment of an individual to a treatment facility under this chapter, the court shall set a date for review of the status of the individual. The date set must be within one year after the date of the order.
3. At least sixty days before a date for review fixed in a court order, the director or superintendent of the treatment facility shall inquire as to whether the individual is presently represented by counsel and file with the court a written report of the facts ascertained. If the individual is not represented by counsel, counsel must be provided at public expense to consult with the individual and, if the individual is indigent, to seek arrangement of counsel at public expense to represent the individual in a proceeding for conditional release or discharge.
4. If the court finds in a review ~~that~~ the individual lacks sufficient financial resources to retain the services of a tier 1a mental health professional and ~~that~~ those services are otherwise not available, the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more tier 1a mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition. In proceedings brought before the next date for review, the court may authorize expenditures from public funds for that purpose.
5. If an application for review of the status of the individual has not been filed by the date for review, the director or superintendent shall file a motion for a new date for review to be set by the court. The date set must be within one year after the previous date for review.

SECTION 19. AMENDMENT. Section 25-01-01 of the North Dakota Century Code is amended and reenacted as follows:

25-01-01. Definitions.

In this title, unless the context or subject matter otherwise requires:

1. ~~"Defective delinquent" means an incompetent mentally deficient person over eighteen years of age who has been found, in accordance with the procedures established in chapter 25-04, to have demonstrated a pattern of aggravated antisocial behavior such as to present a probable peril to the life, person, or property of others, or who has given substantial evidence of continuing propensity for such behavior.~~
2. "Licensed physician" means an individual licensed under the laws of this state to practice medicine and also means a medical officer of the government of the United States while in this state in the performance of the physician's official duties.
3. ~~"Mentally deficient person" means any person, minor or adult other than a mentally ill person, who is so mentally defective as to be incapable of managing that person's affairs and to require supervision, control, and care for that person's own or the public welfare.~~
- 4.2. "Mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs the individual's mental health.
- 5.3. "North Dakota vision services - school for the blind" means the North Dakota vision services - school for the blind as maintained under section 25-06-01.
- 6.4. "School for the deaf" means the school for the deaf of North Dakota.
- 7.5. "State hospital" means the state hospital for the mentally ill.
- 8.6. "Superintendent" means the superintendent of the state hospital, of the life skills and transition center, of North Dakota vision services - school for the blind, or of the school for the deaf, as the case may be.
- 9.7. "Supervising officer" means the executive director of the department of human services or the superintendent of public instruction, as the case may be.
8. "Tier 1 mental health professional" means a tier 1a or tier 1b mental health professional.
 - a. A tier 1a mental health professional is a psychiatrist licensed under chapter 43-17 or a psychologist licensed under chapter 43-32.
 - b. A tier 1b mental health professional is a licensed physician or a physician assistant licensed under chapter 43-17 or an advanced practice registered nurse licensed under chapter 43-12.
9. "Tier 2 mental health professional" means a tier 2a or a tier 2b mental health professional.
 - a. A tier 2a mental health professional is an independent clinician who is a licensed independent clinical social worker licensed under chapter 43-41, a licensed professional clinical counselor licensed under chapter 43-47, or a licensed marriage and family therapist licensed under chapter 43-53.
 - b. A tier 2b mental health professional is an addiction counselor licensed under chapter 43-45 or a registered nurse licensed under chapter 43-12.

10. "Tier 3 mental health professional" means a licensed associate professional counselor licensed under chapter 43-47, a licensed certified social worker licensed under chapter 43-41, a licensed professional counselor licensed under chapter 43-47, an associate marriage and family therapist licensed under chapter 43-53, an occupational therapist licensed under chapter 43-40, a licensed practical nurse licensed under chapter 43-12, a behavior analyst licensed or registered under chapter 43-32, a vocational rehabilitation counselor practicing under chapter 50-06.1, a school psychologist, or a human relations counselor.
11. "Tier 4 mental health professional" means a direct care associate or technician.

SECTION 20. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Screening and admission to a public treatment facility.

Under rules adopted by the department, screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed, in person when reasonably practicable, by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a qualified mental health professional and the individual ~~that~~who is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who ~~has~~ treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and ~~must~~, if appropriate, shall treat the applicant; or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a ~~physician, psychiatrist, psychologist, advanced practice registered nurse,~~ tier 1 or tier 2 mental health professional to examine the individual.

SECTION 21. AMENDMENT. Section 25-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional.

1. Any individual eighteen years of age or over shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that applicant to represent the applicant throughout the proceedings. The attorney shall assist the applicant in completing the petition. The petition must be verified by affidavit of the applicant and contain assertions that the respondent is a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to those facts; and, if known, the name, telephone number, and

address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent.

2. The petition may be accompanied by any of the following:
 - a. A written statement supporting the petition from a ~~psychiatrist, physician, physician assistant, psychologist, advanced practice registered nurse,~~tier 1 mental health professional or an addiction counselor who is practicing within the professional scope of practice and who has personally examined the respondent within forty-five days of the date of the petition.
 - b. One or more supporting affidavits otherwise corroborating the petition.
3. In assisting the applicant in completing the petition, the state's attorney may direct a ~~qualified~~tier 1 or tier 2 mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 22. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-10. Involuntary treatment - Court-ordered examination.

If the petition is not accompanied by a written supportive statement of a ~~psychiatrist, physician, physician assistant, psychologist, advanced practice registered nurse,~~tier 1 mental health professional or a licensed addiction counselor who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear; the address to which the respondent is to report; a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, the respondent may be involuntarily taken into custody and transported to the appointed place; and a statement that the expert examiner may consult with or request participation in the examination by a qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at a treatment facility, at the respondent's home, or at any other suitable place in the community. A request for examination at the state hospital must be screened and approved by a regional human service center. The respondent may be accompanied by one or more relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county that is the respondent's place of residence.

⁴² **SECTION 23. AMENDMENT.** Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report.

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:
 - a. Evaluations of the respondent's physical condition and mental status.
 - b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
 - c. If the report concludes ~~that~~ the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
 - d. The signature of the examiner who prepared the report.
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, physician assistant, psychiatrist, or advanced practice registered nurse~~tier 1b mental health professional~~.
 - b. An evaluation of a respondent's mental status may be made only by a licensed physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program~~tier 1 mental health professional~~.
 - c. An evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, physician assistant, psychiatrist, advanced practice registered nurse, tier 1 mental health professional or a licensed addiction counselor, or licensed psychologist trained in a clinical program.
3. If the expert examiner concludes ~~that~~ the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes ~~that~~ the respondent is a person requiring treatment, or makes no conclusion ~~thereon~~whether the respondent is a person requiring treatment, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be a person who is mentally ill or a person who is both mentally ill

⁴² Section 25-03.1-11 was also amended by section 2 of Senate Bill No. 2038, chapter 350.

and chemically dependent, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date the respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 24. AMENDMENT. Section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-18.1. Court-authorized involuntary treatment with prescribed medication.

1. a. Upon notice and hearing, a ~~treating psychiatrist~~ tier 1b mental health professional may request authorization from the court to treat an individual under a mental health treatment order with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, ~~the treating a psychiatrist and another licensed physician, physician assistant, psychiatrist, or advanced practice registered nurse not involved in the current diagnosis or treatment of the patient or a final year psychiatric resident physician not involved in the current diagnosis or treatment of the patient~~ shall certify:
 - (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;
 - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
 - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
 - (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.
2. a. Evidence of the factors certified under subsection 1 may be presented to the court at an involuntary treatment hearing held pursuant to sections 25-03.1-19 and 25-03.1-22, or at a separate hearing after motion and notice. The court in ruling on the requested authorization for involuntary treatment with prescribed medication shall consider all relevant evidence presented at the hearing, including:
 - (1) The danger the patient presents to self or others;
 - (2) The patient's current condition;

- (3) The patient's treatment history;
 - (4) The results of previous medication trials;
 - (5) The efficacy of current or past treatment modalities concerning the patient;
 - (6) The patient's prognosis; and
 - (7) The effect of the patient's mental condition on the patient's capacity to consent.
- b. Involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of facility staff or for the purpose of punishment.
3. If the factors certified under subsection 1 have been demonstrated by clear and convincing evidence, the court may include in its involuntary treatment order a provision, or it may issue a separate order after notice and hearing, authorizing the ~~treating psychiatrist~~ tier 1b mental health professional to involuntarily treat the patient with prescribed medication on such terms and conditions as are appropriate. The order for involuntary treatment with prescribed medication, however, may not be in effect for more than ninety days.
 4. If a patient has requested an examination by an independent expert examiner under this chapter, and if the ~~treating psychiatrist~~ tier 1b mental health professional has requested authorization for involuntary treatment with prescribed medication, only a psychiatrist or final year psychiatric resident physician may independently examine the patient as to the issue of involuntary treatment with prescribed medication.

SECTION 25. AMENDMENT. Section 32-03-48 of the North Dakota Century Code is amended and reenacted as follows:

32-03-48. Definitions.

As used in sections 32-03-48 through 32-03-50, unless the context otherwise requires:

1. "Critical incident" means any event encountered by emergency service personnel within the scope of their employment which causes them to experience unusually strong emotional reactions that have the potential to interfere with their ability to perform their jobs or that may interfere with their personal lives.
2. "Critical incident stress debriefing" means the process of resolving the effects of critical incidents on emergency service personnel through a structured meeting with both psychological and educational components according to the model approved by the state department of health.
3. "Critical incident stress management team" means those volunteers who are recognized by the state department of health as members of an organized group that provides critical incident stress debriefing services on behalf of the state.

4. "Emergency service personnel" means individuals who provide emergency services to persons requiring medical aid, firefighting services, law enforcement assistance, or other emergency assistance. The term includes law enforcement officers, firefighters, rescue personnel, ambulance personnel, quick response personnel, emergency service dispatchers, nurses, physicians, and other emergency care providers.
5. ~~"Mental health personnel" means psychiatrists, licensed psychologists, licensed social workers, licensed mental health counselors, nurses, members of the clergy, and other individuals approved by the state department of health to function as members of a critical incident stress management team, who have completed appropriate training as approved by the department.~~
6. "Peer support personnel" means those members of a critical incident stress management team who are emergency service personnel and who have completed appropriate training approved by the state department of health.

⁴³ **SECTION 26. AMENDMENT.** Section 43-41-07 of the North Dakota Century Code as amended in section 2 of Senate Bill No. 2033, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

43-41-07. Qualification for licensure by an applicant licensed in another jurisdiction.

1. An applicant may be granted a license upon satisfactory:
 - a. Satisfactory proof to the board that the applicant is licensed in good standing under the laws of another jurisdiction that imposes substantially the same requirements as this chapter ~~and a board determination; or~~
 - b. Determination of the board that at the time of application for licensure under this section the applicant is licensed in good standing under the laws of another jurisdiction and possesses qualifications or experience in the practice of social work which are substantially similar to the minimum requirements for licensure under this chapter.
2. The applicant shall pay the licensure fees specified by the board.

SECTION 27. AMENDMENT. Subdivision b of subsection 1 of section 43-48-15 of the North Dakota Century Code is amended and reenacted as follows:

- b. Being convicted of an offense, as defined by ~~subsection 20 of~~ section 12.1-01-04, and which the board determines has a direct bearing upon a person's ability to serve the public as a licensed clinical laboratory personnel or, following the conviction of any offense, if the board determines that the person is not sufficiently rehabilitated.

SECTION 28. AMENDMENT. Section 49-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-05. Railroad police.

⁴³ Section 43-41-07 was also amended by section 2 of Senate Bill No. 2033, chapter 299.

Railroad police officers who are designated by a railroad to be licensed under the laws of this state, while engaged in their employment with the railroad, have the authority of a "law enforcement officer" pursuant to subsection 17 of ~~as defined under section 12.1-01-04~~ for the purpose of arresting any person committing a felony on railroad property or associated with railroad equipment, or to arrest a person committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad, and ~~have the power of removing~~ may remove an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1.

SECTION 29. 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, tier 1 mental health professional, tier 2 mental health professional, tier 3 mental health professional, or tier 4 mental health professional as defined under section 25-01-01;~~ or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, ~~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~~ individual in that ~~person's~~ individual's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.
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.
3. A person ~~who has~~ having 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.

SECTION 30. AMENDMENT. Section 50-25.2-03 of the North Dakota Century Code is amended and reenacted as follows:

50-25.2-03. Reporting of abuse or neglect - Method of reporting.

1. Any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, or caregiver having knowledge that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, shall report the information to the department or the department's designee or to an appropriate law enforcement agency if the knowledge is derived from information received by that ~~person~~ individual in that ~~person's~~ individual's official or professional capacity. A member of the clergy, however, is not required to report the information if the knowledge is derived from information received in the

capacity of spiritual adviser. For purposes of this subsection, "medical or mental health professional or personnel" means a professional or personnel providing health care or services to a vulnerable adult, on a full-time or part-time basis, on an individual basis or at the request of a caregiver, and includes a ~~physician, nurse, medical examiner, coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational therapist, addiction counselor, counselor, marriage and family therapist, tier 1 through tier 4 mental health professional as defined under section 25-01-01, social worker, mental health professional,~~ emergency medical services personnel, hospital personnel, nursing home personnel, congregate care personnel, or any other person providing medical and mental health services to a vulnerable adult.

2. A report, if required by section 25-01.3-04, satisfies all reporting requirements of this chapter.
3. Any person not required to report under subsection 1 who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, may report the information to the department or the department's designee or to an appropriate law enforcement agency. A law enforcement agency receiving a report under this section shall immediately notify the department or the department's designee of the report.
4. ~~A person~~An individual required to report under subsection 1 shall make an oral or written report and a person voluntarily reporting under subsection 2 may make an oral or written report, as soon as possible. To the extent reasonably possible, a person who makes a report under this section shall include in the report:
 - a. The name, age, and residence address of the alleged vulnerable adult;
 - b. The name and residence address of the caregiver, if any;
 - c. The nature and extent of the alleged abuse or neglect or the conditions and circumstances that would reasonably be expected to result in abuse or neglect;
 - d. Any evidence of previous abuse or neglect, including the nature and extent of the abuse or neglect; and
 - e. Any other information ~~that~~ in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse or neglect and the identity of the individual responsible for the alleged abuse or neglect.

⁴⁴ **SECTION 31. AMENDMENT.** Section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-01-01. General definitions.

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

⁴⁴ Section 62.1-01-01 was also amended by section 1 of House Bill No. 1395, chapter 428.

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage, then the term includes the device for an individual who is prohibited from possessing a firearm under this title. However, the term includes a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
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.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic

cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].

7. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second.
9. "Mentally deficient individual" means any individual, minor or adult other than a mentally ill individual, who is so mentally defective as to be incapable of managing that individual's affairs and to require supervision, control, and care for that individual's own or the public welfare.
10. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
- 40-11. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
- 44-12. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
- 42-13. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
- 43-14. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
- 44-15. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.

- ~~45-16.~~ "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
- ~~46-17.~~ "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell.

SECTION 32. AMENDMENT. Subdivisions b and c of subsection 1 of section 62.1-02-01 of the North Dakota Century Code are amended and reenacted as follows:

- 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 person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient person ~~as defined in section 25-04-04 individual~~, 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 62.1-02-01.2.

SECTION 33. AMENDMENT. Subdivision b of subsection 1 of section 62.1-02-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- b. Finds that a person is a ~~"mentally deficient person", as defined in subsection 3 of section 25-04-04~~ mentally deficient individual;

Approved April 25, 2017

Filed April 25, 2017

CHAPTER 98

SENATE BILL NO. 2300

(Senators Casper, Meyer, Robinson)
(Representatives O'Brien, Vetter, Boe)

AN ACT to amend and reenact section 12.1-17-02 of the North Dakota Century Code, relating to aggravated assault of a peace officer; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-02. Aggravated assault.

1. Except as provided in subsection 2, a person is guilty of a class C felony if that person:
 - a. Willfully causes serious bodily injury to another human being;
 - b. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
 - c. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
 - d. Fires a firearm or hurls a destructive device at another human being.
2. The person is guilty of a class B felony if the person violates subsection 1 and the victim is ~~under the age of:~~
 - a. ~~Is under twelve years of age;~~
 - b. ~~Is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; or the victim suffers~~
 - c. ~~Suffers~~ permanent loss or impairment of the function of a bodily member or organ.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 99**SENATE BILL NO. 2216**

(Senators Dever, Burckhard, Nelson)
(Representatives Karls, J. Nelson, Westlind)

AN ACT to create and enact a new subsection to section 12.1-17-11 of the North Dakota Century Code, relating to the definition of a health care facility; to amend and reenact subsection 1 of section 12.1-17-11 of the North Dakota Century Code, relating to contact by bodily fluids or excrement; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-17-11 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is guilty of an offense if the individual causes blood, emesis, excrement, mucus, saliva, semen, vaginal fluid, or urine to come in contact with:
 - a. A law enforcement officer acting in the scope of employment;
 - b. An employee of a correctional facility or the department of corrections and rehabilitation acting in the scope of employment unless the employee does an act within the scope of employment which requires or causes the contact;
 - c. ~~Any person~~An individual lawfully present in a correctional facility who is not an inmate;
 - d. ~~Any person~~An individual lawfully present in the penitentiary or an affiliated facility of the penitentiary who is not an inmate; or
 - e. ~~Any person who is~~An individual transporting an individual who is lawfully detained;
 - f. A health care facility employee or contractor acting within the scope of employment unless the employee or contractor is performing an act within the scope of employment which requires or causes the contact; or
 - g. An emergency responder, including a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter, officer of a nonprofit volunteer fire department, emergency medical technician, emergency nurse, ambulance operator, or a provider of civil defense services, who while acting in the scope of employment is present at a health care facility.

SECTION 2. A new subsection to section 12.1-17-11 of the North Dakota Century Code is created and enacted as follows:

As used in this section, "health care facility" means an office or institution providing health care services or treatment of diseases, whether physical,

mental, or emotional, or other medical, physiological, or psychological conditions, including a hospital; clinic; ambulatory surgery center; outpatient care facility; weight control clinic; nursing home; basic care or assisted living facility; laboratory; or office of any medical professional licensed or registered under title 43 or any individual who is included within a specialty and subspecialty of those fields. The term includes a waiting room, hallway, private room, semiprivate room, ward, and any mobile or temporary facility.

Approved April 19, 2017

Filed April 20, 2017

CHAPTER 100

HOUSE BILL NO. 1218

(Representatives Delmore, Klemin, K. Koppelman, Paur)
(Senators Armstrong, Casper, Luick, Nelson)

AN ACT to amend and reenact subsection 2 of section 12.1-20-07 of the North Dakota Century Code, relating to the offense level for sexual assault; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-20-07 of the North Dakota Century Code is amended and reenacted as follows:

2. The offense is ~~a class~~:
 - a. A class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, ~~a~~; or
 - b. A class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or ~~a class B~~ misdemeanor if the actor's conduct violates subdivision a of subsection 1.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 101

HOUSE BILL NO. 1183

(Representatives Boschee, Hanson, K. Koppelman, Maragos, M. Nelson, Roers
Jones)

(Senators Armstrong, D. Larson, Nelson, Piepkorn)

AN ACT to amend and reenact section 12.1-20-12.1, subsection 2 of section 12.1-20-12.2, and subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code, relating to indecent exposure toward minors, surreptitious intrusion, and sexual performances by children; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-12.1. Indecent exposure.

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:
 - a. Masturbates in a public place or in the presence of a minor; or
 - b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place;:
 - c. Exposes one's penis, vulva, or anus by unsolicited electronic means; or
 - d. Exposes one's penis, vulva, or anus by any electronic means to a minor.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.
3. A person who commits a violation of subdivision a or b of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.
4. The act of a woman discreetly breastfeeding her child is not a violation of this section.
5. As used in this section, "electronic means" includes images and picture, transmitted via electronic mail, electronic messaging, or from an electronic communications device.

SECTION 2. AMENDMENT. Subsection 2 of section 12.1-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

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, or if the victim is a minor.

SECTION 3. 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;~~
 - a. Sexual intercourse;
 - b. Sodomy, as defined under section 12.1-27.1-01;
 - c. Sexual bestiality;
 - d. Masturbation;
 - e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
 - f. Lewd exhibition of the buttocks, breasts, or genitals;
 - g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction; or
 - h. Physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or breasts. It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 102

HOUSE BILL NO. 1293

(Representatives Grueneich, Dockter, Headland, K. Koppelman, Lefor, Nathe, Oliver,
M. Ruby, Satrom, Seibel)
(Senator Wanzek)

AN ACT to amend and reenact sections 12.1-22-03 and 37-17.1-22 of the North Dakota Century Code, relating to trespassing on posted property and disaster and emergency response recovery costs; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-22-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-22-03. Criminal trespass - Noncriminal offense on posted property.

1. An individual is guilty of a class C felony if, knowing that that individual is not licensed or privileged to do so, the individual enters or remains in a dwelling or in highly secured premises.
2. An individual is guilty of a class A misdemeanor if, knowing that that individual is not licensed or privileged to do so, the individual:
 - a. Enters or remains in or on any building, occupied structure, or storage structure, or separately secured or occupied portion thereof; or
 - b. Enters or remains in any place so enclosed as manifestly to exclude intruders.
3.
 - a. An individual is guilty of a class B misdemeanor if, knowing that that individual is not licensed or privileged to do so, the individual enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the individual in charge of the premises or other authorized individual or by posting in a manner reasonably likely to come to the attention of intruders. The name of the person posting the premises must appear on each sign in legible characters.
 - b. Even if the conduct of the owner, tenant, or individual authorized by the owner varies from the provisions of subdivision a, an individual may be found guilty of violating subdivision a if the owner, tenant, or individual authorized by the owner substantially complied with subdivision a and notice against trespass is clear from the circumstances.
 - c. An individual who violates ~~this subsection~~subdivision a is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
4.
 - a. An individual, knowing the individual is not licensed or privileged to do so, may not enter or remain in a place as to which notice against trespass is

- given by posting in a manner reasonably likely to come to the attention of intruders. A violation of this subdivision is a noncriminal offense.
- b. A peace officer shall cite an individual who violates subdivision a with a fine of two hundred fifty dollars for each violation.
 - c. The peace officer citing the individual shall:
 - (1) Take the name and address of the individual; and
 - (2) Notify the individual of the right to request a hearing if posting bond by mail.
 - d. The peace officer may not take the individual into custody or require the individual to proceed with the peace officer to any other location for the purpose of posting bond. The officer shall provide the individual with an envelope for use in mailing the bond.
 - e. An individual cited may appear before the designated official and pay the statutory fine for the violation at or before the time scheduled for hearing.
 - f. If the individual has posted bond, the individual may forfeit bond by not appearing at the designated time.
 - g. If the individual posts bond by mail, the bond must be submitted within fourteen days of the date of the citation and the individual cited shall indicate on the envelope or citation whether a hearing is requested. If the individual does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the individual is deemed to have admitted to the violation and to have waived the right to a hearing on the issue of commission of the violation. If the individual requests a hearing, the court for the county in which the citation is issued shall issue a summons to the individual requesting the hearing notifying the individual of the date of the hearing before the designated official.
 - h. Upon appearing at the hearing scheduled in the citation or otherwise scheduled at the individual's request, the individual may make a statement in explanation of the individual's action. The official may at that time waive or suspend the statutory fine or bond.
 - i. A citing peace officer may not receive the statutory fine or bond.
 - j. The bond required to secure appearance before the judge must be identical to the statutory fine established in subdivision b.
- 4-5. An individual is guilty of a class B misdemeanor if that individual remains upon the property of another after being requested to leave the property by a duly authorized individual. An individual who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
- 5-6. This section does not apply to a peace officer in the course of discharging the peace officer's official duties.

SECTION 2. AMENDMENT. Section 37-17.1-22 of the North Dakota Century Code is amended and reenacted as follows:

~~37-17.1-22. (Effective through June 30, 2017) Disaster or emergency response and recovery costs.~~

~~Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a disaster or emergency declared by the president of the United States, the director of the division of homeland security shall determine and record the costs of the state and local response and recovery operations in accordance with an agreement with the federal government, in accordance with procedures established by the governor in the case of a state declared disaster or emergency, and in accordance with procedures established by the state emergency response plan. If the event has met the Stafford Act minimum for a presidential disaster declaration and for which the request is denied, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state and fifty percent of the public infrastructure recovery costs above statutorily maintained emergency funds for counties that exceeds twice the individual county federal declaration eligibility threshold, limited to a maximum amount available per disaster of one million dollars and a maximum amount available per biennium of three million dollars. Immediately following the response or recovery operations, or prior thereto if determined necessary by the governor, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state. Notwithstanding other provisions of chapter 54-16, it must be conclusively presumed upon receipt by the emergency commission of such application from the governor that a disaster or emergency exists, and the commission immediately shall grant and direct the transfer to the department of the governor's designated representative of an amount equal to that certified in such application by the governor.~~

~~(Effective after June 30, 2017) Disaster or emergency response and recovery costs.~~

~~Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a disaster or emergency declared by the president of the United States, the director of the division of homeland security shall determine and record the costs of the state response and recovery operations in accordance with an agreement with the federal government or in accordance with procedures established by the governor in the case of a state-declared disaster or emergency. Immediately following the response or recovery operations, or prior thereto if determined necessary by the governor, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state. Notwithstanding other provisions of chapter 54-16, it must be conclusively presumed upon receipt by the emergency commission of such application from the governor that a disaster or emergency exists, and the commission immediately shall grant and direct the transfer to the department of the governors designated representative of an amount equal to that certified in such application by the governor.~~

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

Approved February 23, 2017

Filed February 23, 2017

CHAPTER 103

HOUSE BILL NO. 1426

(Representatives Porter, Kempenich, Rohr, Schmidt)
(Senator Schaible)

AN ACT to amend and reenact subsection 4 of section 12.1-25-01, subsection 1 of section 12.1-25-02, subsection 1 of section 12.1-25-03, and section 12.1-25-04 of the North Dakota Century Code, relating to riot offenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12.1-25-01 of the North Dakota Century Code is amended and reenacted as follows:

4. The offense is a class ~~GB~~ felony if it is under subdivision b of subsection 1 ~~and/or~~ the riot involves one hundred or more persons. Otherwise it is a class A ~~misdemeanor~~ ~~C~~ felony.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-25-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A person is guilty of a class ~~GB~~ felony if ~~he~~ the person:
 - a. Knowingly supplies a firearm, dangerous weapon, or destructive device for use in a riot;
 - b. Teaches another to prepare or use a firearm, dangerous weapon, or destructive device with intent that any such thing be used in a riot; or
 - c. While engaging in a riot, is knowingly armed with a firearm, dangerous weapon, or destructive device.

SECTION 3. AMENDMENT. Subsection 1 of section 12.1-25-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A person is guilty of a class ~~BA~~ misdemeanor if ~~he~~ the person engages in a riot, as defined in section 12.1-25-01.

SECTION 4. AMENDMENT. Section 12.1-25-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-25-04. Disobedience of public safety orders under riot conditions.

A person is guilty of a class ~~BA~~ misdemeanor if, during a riot as defined in section 12.1-25-01, or when one is immediately impending, ~~he~~ the person disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 23, 2017

Filed February 23, 2017

CHAPTER 104**HOUSE BILL NO. 1245**

(Representatives Beadle, Blum, Boehning, Maragos, Streyle)
(Senators Casper, Unruh)

AN ACT to amend and reenact subsection 37 of section 12.1-30-03 of the North Dakota Century Code, relating to alcohol establishments open on Sunday; and to repeal section 5-02-05.1 of the North Dakota Century Code, relating to local Sunday alcoholic beverage permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 37 of section 12.1-30-03 of the North Dakota Century Code is amended and reenacted as follows:

37. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in ~~sections~~section 5-02-05 and ~~5-02-05.1~~.

SECTION 2. REPEAL. Section 5-02-05.1 of the North Dakota Century Code is repealed.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 105

HOUSE BILL NO. 1222

(Representatives Delmore, Klemin, K. Koppelman, Maragos, Paur, Vetter)
(Senators D. Larson, Luick, Nelson)

AN ACT to create and enact section 12.1-31-01.2 of the North Dakota Century Code, relating to the process for seeking a sexual assault restraining order; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 12.1-31-01.2 of the North Dakota Century Code is created and enacted as follows:

12.1-31-01.2. Sexual assault restraining order - Penalty.

1. For purposes of this section:
 - a. "Second or subsequent violation of a protection order" means two or more violations of protection orders.
 - b. "Sexual assault" means nonconsensual sexual contact as defined in section 12.1-20-07.
2. An individual who is the victim of sexual assault or the parent, stepparent, or guardian of a minor who reasonably believes the minor is a victim of sexual assault may seek a sexual assault restraining order from a court of competent jurisdiction in the manner provided in this section.
3. A petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual who committed the sexual assault, and that the individual committed the sexual assault. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition.
4. If the petition for relief alleges reasonable grounds to believe an individual has committed sexual assault, the court, pending a full hearing, may grant a temporary sexual assault restraining order.
5. A temporary restraining order may be entered only against the individual named in the petition. The order must include prohibiting the individual from:
 - a. Harassing, stalking, or threatening the individual requesting the order;
 - b. Appearing at the individual's residence, school, and place of employment; and
 - c. Contacting the individual requesting the order.
6. The court may grant a sexual assault restraining order prohibiting the respondent from contacting, harassing, stalking, or threatening the applicant.

and from appearing at the applicant's residence, school, and place of employment if:

- a. An individual files a petition under subsection 3:
 - b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsections 4 and 5, and with notice of the time and place of the hearing:
 - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order unless the time period is extended upon written consent of the parties, or upon a showing the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence; and
 - d. The court finds after the hearing there are reasonable grounds to believe the respondent committed sexual assault.
7. A restraining order may be issued only against the individual named in the petition. Relief granted by the restraining order may not exceed a period of two years. The restraining order may be served on the respondent by publication pursuant to rule 4 of the North Dakota Rules of Civil Procedure.
8. A sexual assault restraining order must contain a conspicuous notice to the respondent providing:
- a. The specific conduct that constitutes a violation of the order;
 - b. Notice that violation of the restraining order is punishable as a class A misdemeanor; and
 - c. Notice that a peace officer may arrest the respondent without a warrant and take the respondent into custody if the peace officer has probable cause to believe the respondent has violated an order issued under this section.
9. If the respondent knows of an order issued under subsections 4 and 5, or subsection 6, violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony. If the existence of an order issued under subsection 3, or subsections 4 and 5 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.
10. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of sexual assault. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving sexual assault.
11. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist an individual in the preparation of documents necessary to secure a restraining order under this section.

12. Fees for filing and service of process may not be charged to the petitioner in a proceeding seeking relief due to sexual assault under section 12.1-20-07.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 106

HOUSE BILL NO. 1304

(Representatives Carlson, Headland, K. Koppelman, Porter)
(Senators Armstrong, Casper)

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to prohibiting the wearing of masks, hoods, and face coverings during the commission of a criminal offense; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

Wearing of masks during commission of criminal offense prohibited.

1. An individual may not wear a mask, hood, or other device that covers, hides, or conceals any portion of that individual's face:
 - a. With the intent to intimidate, threaten, abuse, or harass any other individual;
 - b. For the purpose of evading or escaping discovery, recognition, or identification during the commission of a criminal offense; or
 - c. For the purpose of concealment, flight, or escape when the individual has been charged with, arrested for, or convicted of a criminal offense.
2. A violation of this section is a class A misdemeanor.

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

Approved February 23, 2017

Filed February 23, 2017

CHAPTER 107

SENATE BILL NO. 2309

(Senators Poolman, Kreun, Unruh, Nelson)
(Representatives Blum, O'Brien)

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the establishment of a domestic violence court pilot project; and to amend and reenact section 12-60-23, subsection 9 of section 12.1-31.2-01, subsections 1 and 3 of section 12.1-31.2-02, section 14-07.1-02, and subsections 4 and 5 of section 14-07.1-03 of the North Dakota Century Code, relating to the issuance, transmittal, and registry of protection orders and orders prohibiting contact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-23 of the North Dakota Century Code is amended and reenacted as follows:

12-60-23. Bureau to maintain registry of protection orders, orders prohibiting contact, and restraining orders.

The bureau shall maintain a registry of all orders of which it receives notice under sections 11-15-32, 12.1-31.2-02, 14-07.1-02, and 14-07.1-03.

SECTION 2. AMENDMENT. Subsection 9 of section 12.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

- ~~9. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of disorderly conduct. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving disorderly conduct. Whenever a restraining order is issued, extended, modified, or terminated under this section, the court shall transmit the order electronically to the bureau. Unless the order is a temporary order under subsection 4, the bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. The sheriff of the county in which the order was issued shall maintain and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency, pursuant to bureau and federal requirements. Whenever a restraining order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the restraining order is issued. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify the sheriff of the county that issued the order, the clerk of court's requirement to forward the order to a law enforcement agency will be satisfied.~~

SECTION 3. AMENDMENT. Subsections 1 and 3 of section 12.1-31.2-02 of the North Dakota Century Code are amended and reenacted as follows:

1. If an individual who is charged with or arrested for a crime of violence or threat of violence, stalking, harassment, or a sex offense is released from custody before arraignment or trial, the court authorizing the release of the individual shall consider and may issue, ~~if there is no outstanding restraining or protection order prohibiting the individual from having contact with the victim,~~ an order prohibiting the individual from having contact with the victim. The order must contain the court's directives and must inform the individual that any violation of the order constitutes a criminal offense. The state's attorney shall provide a copy of the order to the victim. The court shall determine at the time of the individual's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section before the time the individual is charged, the order expires at the individual's arraignment or within seventy-two hours of issuance if charges against the individual are not filed.

3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order within one business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order ~~for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants.~~ The order is enforceable in any jurisdiction in this state in the central warrant information system and the national crime information center database provided by the federal bureau of investigation, or its successor agency.
 - a. Once the bureau, after consultation with the state court administrator, determines and implements a method to transmit electronically to the bureau an order prohibiting contact, the court electronically shall send the full text of the order as issued, modified, extended, or terminated in accordance with this section and any data fields identified by the bureau. This electronic submission will fulfill the law enforcement agency's requirement to enter the order in the central warrant information system, but will not fulfill its requirement to enter, maintain, and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency.
 - b. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify law enforcement about the order, the clerk of court's requirement to forward the order to the law enforcement agency will be satisfied.
 - c. Once the bureau, after consultation with the director of state radio, determines and implements a method to enter the order into the national crime information center database provided by the federal bureau of investigation, or its successor agency, the bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. This electronic entry will fulfill the law enforcement agency's requirement to enter the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency, but will not fulfill its requirement to maintain and respond to inquiries regarding the

order in the national crime information center database provided by the federal bureau of investigation, or its successor agency.

SECTION 4. A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

Domestic violence court.

The district court may require an individual who has committed a crime involving domestic violence, as defined in this chapter, or who has violated a domestic violence protection order to complete domestic violence treatment under the direction of the domestic violence court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with chapter 12.1-32.

⁴⁵ **SECTION 5. AMENDMENT.** Section 14-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order, or at a later date if good cause is shown.
3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

⁴⁵ Section 14-07.1-02 was also amended by section 1 of House Bill No. 1402, chapter 116.

- d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
 - g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides.
5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.
 6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
 7. No order or agreement under this section affects title to any real property in any matter.
 8. The petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
 9. Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

10. Whenever a protection order is issued, extended, modified, or terminated under this section, the court shall transmit the order electronically to the bureau. The bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. The sheriff of the county in which the order was issued shall maintain and respond to inquiries regarding the record in the national crime information center database provided by the federal bureau of investigation, or its successor agency, pursuant to bureau and federal requirements. Whenever a protection order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the protection order is issued. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify the sheriff of the county that issued the order, the clerk of court's requirement to forward the order to a law enforcement agency will be satisfied.

SECTION 6. AMENDMENT. Subsections 4 and 5 of section 14-07.1-03 of the North Dakota Century Code are amended and reenacted as follows:

4. A full hearing as provided by section 14-07.1-02 must be set for not later than fourteen days from the issuance of the temporary order, or at a later date if good cause is shown. The respondent must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.
5. ~~The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.~~ Whenever a temporary protection order is issued, extended, modified, or terminated under this section, the court shall transmit the order electronically to the bureau. Whenever a temporary protection order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the order is issued. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify the sheriff of the county that issued the order, the clerk of court's requirement to forward the order will be satisfied.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 108

HOUSE BILL NO. 1041

(Legislative Management)
(Incarceration Issues Committee)

AN ACT to create and enact a new section to chapter 12.1-32 and a new section to chapter 54-23.3 of the North Dakota Century Code, relating to presumptive probation and faith-based organizations; to amend and reenact sections 12-44.1-32, 12-54.1-01, 12-59-08, 12.1-17-13, and 12.1-23-05, subdivision c of subsection 1 of section 12.1-32-02, subsection 2 of section 12.1-32-02, subsection 3 of section 12.1-32-07, section 19-03.1-22.3, subsection 1 of section 19-03.1-22.5, subsections 5 and 7 of section 19-03.1-23, subdivision a of subsection 1 of section 19-03.1-23.1, subdivision f of subsection 5 of section 39-08-01, subsection 2 of section 39-20-01, subsection 17 of section 50-06-05.1, and section 50-09-29 of the North Dakota Century Code, relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, sentencing alternatives, credit for time spent in custody, terms and conditions of probation, controlled substances, and the supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation; to provide a report to the legislative management; to provide for a report to the legislative assembly; to provide an appropriation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-32 of the North Dakota Century Code is amended and reenacted as follows:

~~12-44.1-32. Performance-based sentence~~Sentence reduction credit.

~~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~~An inmate sentenced to a correctional facility under this chapter is eligible to earn sentence reductions based upon performance criteria established ~~throughby~~ the administrator ~~except that sentence reductions may not be given to offenders sentenced under section 12.1-32-09.1, including sentence reduction for good conduct.~~ 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~~Sentence reduction.

Except as provided under section 12.1-32-09.1, ~~offenders~~an offender committed to the legal and physical custody of the department of corrections and rehabilitation ~~are~~is 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 before sentencesentencing and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 3. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is amended and reenacted as follows:

12-59-08. EmergencyMedical paroles.

~~If~~ if an inmate, including an inmate whose sentence is subject to sections 12.1-32-02.1 and 12.1-32-09.1, and an inmate sentenced under subsection 1 of section 12.1-32-01, has a serious or terminal medical condition, the parole board may consider whether ~~an~~ granted the inmate may receive an emergency medical parole at a meeting scheduled by the chairman. The board may request the inmate to personally appear before the board before the board makes a decision whether to grant the inmate an emergency parole. The board may grant or deny an emergency parole, or grant a conditional emergency parole, or continue its consideration to another meeting. Two members of the parole board may grant emergency parole, subject to terms and conditions of emergency parole that may be established by the two members of the parole board, or by the department of corrections and rehabilitation with the approval of the parole board. An inmate who receives an emergency medical parole remains under the jurisdiction of the parole board until the expiration of the maximum term or terms of imprisonment for which the inmate was sentenced, less any sentence reduction the inmate has received.

SECTION 4. AMENDMENT. Section 12.1-17-13 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-13. Mandated treatment of domestic violence offenders.

The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic violence offender evaluation and treatment program as determined by the court. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender treatment program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender treatment program would be inappropriate.

⁴⁶ **SECTION 5. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-05. Grading of theft offenses.

1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the property or services stolen exceed fifty thousand dollars in value.

⁴⁶ Section 12.1-23-05 was also amended by section 1 of House Bill No. 1269, chapter 164.

2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value but do not exceed fifty thousand dollars or are acquired or retained by a threat to commit a felony.
3. Theft under this chapter is a class C felony if:
 - a. The property or services stolen exceed one thousand 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 one hundred dollars in value;
 - c. The property or services stolen exceed one hundred 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, or an 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;
 - 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.
4. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 5 are met.
5. Theft under this chapter of property or services of a value not exceeding five hundred dollars is a class B misdemeanor if:
 - a. The theft was not committed by threat;

- b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
- c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.

The special classification provided in this subsection applies if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.

6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which the actor believes necessary on the actor's part to complete the theft except receipt of the property.
7. For purposes of grading, the amount involved in a theft under this chapter is the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

SECTION 6. AMENDMENT. Subdivision c of subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

- c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
 - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.

SECTION 7. AMENDMENT. Subsection 2 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal. The total amount of credit the defendant is entitled to for time spent in custody and and

any credit for sentence reduction under section 12-44.1-32 or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.

SECTION 8. AMENDMENT. Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program;
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program; or
- k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

SECTION 9. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Presumptive probation.

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor

offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; or if a mandatory term of incarceration is required by law.

2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
 - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
 - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
 - c. If the individual used threats or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

⁴⁷ **SECTION 10. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class AB misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 11. AMENDMENT. Subsection 1 of section 19-03.1-22.5 of the North Dakota Century Code is amended and reenacted as follows:

1. The use of controlled substance analog includes the ingestion, inhalation, absorption, or any other method of taking the controlled substance analog into the body. An individual who intentionally uses a controlled substance analog is guilty of a class C ~~felony~~A misdemeanor for a first offense and a class C felony for a second or subsequent offense, unless the individual obtains the analog directly from a practitioner or pursuant to a valid prescription or order of a practitioner.

⁴⁷ Section 19-03.1-22.3 was also amended by section 5 of House Bill No. 1269, chapter 164.

⁴⁸ **SECTION 12. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-23 of the North Dakota Century Code are amended and reenacted as follows:

5. A violation of this ~~chapter~~title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this ~~chapter~~title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for a first offense under this subsection and a class C felony for a second or subsequent offense under this subsection. If, at the time of the offense the person is in or on, ~~or within one thousand feet [300.48 meters]~~ of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves ~~one ounce [28.35 grams] or less of marijuana~~. Any person who violates this subsection regarding possession of ~~one ounce [28.35 grams] or less of marijuana~~ is guilty of a class B misdemeanor.

- b. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.

- c. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.

- d. Probation under this subsection may include placement in another facility, treatment program, or drug court. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

- e. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.

⁴⁸ Section 19-03.1-23 was also amended by section 6 of House Bill No. 1269, chapter 164, section 1 of House Bill No. 1341, chapter 165, and section 2 of House Bill No. 1341, chapter 165.

⁴⁹ **SECTION 13. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. The offense was committed during a school-sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in or, on, or within ~~one thousand feet [300.48 meters]~~three hundred feet [91.4 meters] of, the real property comprising a ~~child-care or preschool facility, a~~ public or private elementary or secondary school, or a public career and technical education school, ~~or a public or private college or university;~~

⁵⁰ **SECTION 14. AMENDMENT.** Subdivision f of subsection 5 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

- f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. The district court may terminate probation under this section when the defendant completes the drug treatment program. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

⁵¹ **SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

⁴⁹ Section 19-03.1-23.1 was also amended by section 7 of House Bill No. 1269, chapter 164, section 1 of House Bill No. 1270, chapter 167, and section 3 of House Bill No. 1341, chapter 165.

⁵⁰ Section 39-08-01 was also amended by section 1 of Senate Bill No. 2176, chapter 268, and section 2 of Senate Bill No. 2176, chapter 268.

⁵¹ Section 39-20-01 was also amended by section 4 of Senate Bill No. 2176, chapter 268.

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used.

⁵² **SECTION 16. AMENDMENT.** Subsection 17 of section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

17. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise county administration of that program. Provided, however, that the 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. ~~Unless at least seven years has elapsed since the most recent felony conviction that has as an element the possession, use, or distribution of a controlled substance, the~~The department shall ~~may not~~ deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

SECTION 17. AMENDMENT. Section 50-09-29 of the North Dakota Century Code is amended and reenacted as follows:

50-09-29. Requirements for administration of temporary assistance for needy families.

1. Except as provided in subsections 2, 3, and 4, the department of human services, in its administration of the temporary assistance for needy families program, shall:
 - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
 - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;
 - c. Exempt eligible households from the requirements of subdivision b due to mental or physical disability of a parent or child, mental or physical incapacity of a parent, or other hardship including a parent subject to domestic violence as defined in section 14-07.1-01;
 - d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;

⁵² Section 50-06-05.1 was also amended by section 3 of House Bill No. 1136, chapter 331.

- e. Except as provided in subdivision j, and as required to allow the state to receive funds from the federal government under title IV-A, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996;
- f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the department;
- g. Exclude one motor vehicle of any value in determining eligibility;
- h. Require work activities for all household members not specifically exempted by the department of human services for reasons such as mental or physical disability of a parent or child or mental or physical incapacity of a parent;
- i. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;
- j. To the extent required to allow the state to receive funds from the federal government under title IV-A, provide benefits to otherwise eligible noncitizens who are lawfully present in the United States;
- k. Establish and enforce standards against program fraud and abuse;
- l. Provide employment placement programs;
- m. Exempt from assets and income the savings and proportionate matching funds in individual development accounts;
- n. Determine the unemployment rate of adults living in a county that includes Indian reservation lands and a significant population of Indian individuals by using unemployment data provided by job service North Dakota;
- o. When appropriate, require household members to complete high school;
- p. To the extent required to allow the state to receive funds from the federal government under title IV-A, exempt single parents from required work activities;
- q. Provide for sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- r. Provide for sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- s. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;
- t. Require each household to participate in developing an individual employment plan and provide for sanctions, including termination of assistance to the household, if adult or minor household members age

- sixteen or older fail to cooperate with the terms of the individual employment plan;
- u. Provide pre-pregnancy family planning services that are to be incorporated into the temporary assistance for needy families program assessment;
 - v. Except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the probable month of the child's conception;
 - w. Disregard earned income as an incentive allowance for no more than twelve months; and
 - x. Consider, and if determined appropriate, authorize demonstration projects in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere; and
 - y. ~~Unless at least seven years has elapsed since the most recent felony conviction that has as an element the possession, use, or distribution of a controlled substance, deny assistance to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].~~
2. If the secretary of the United States department of health and human services determines that funds otherwise available for the temporary assistance for needy families program in this state must be reduced or eliminated should the department of human services administer the program in accordance with any provision of subsection 1, the department of human services shall administer the program in a manner that avoids the reduction or loss.
 3. If the department of human services determines, subject to the approval of the legislative management, that there is insufficient worker opportunity, due to increases in the unemployment rate, to participate in work activities, the department may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.
 4. If the department of human services determines, subject to the approval of the legislative management, that administration of the temporary assistance for needy families program, in the manner provided by subsection 1, causes otherwise eligible individuals to become a charge upon the counties under chapter 50-01, the department may administer the program in a manner that avoids that result.
 5. The department of human services may not deny assistance to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act [21 U.S.C. 802(6)].

SECTION 18. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Faith-based programming.

1. The department of corrections and rehabilitation, with contracts through the department of human services and through the implementation of the community behavioral health program, shall allow faith-based organizations to provide services to individuals who need addiction treatment services.
2. For purposes of this section "faith-based organization" means a nonprofit corporation or association operated by a religious or denominational organization, including an organization operated for religious, educational, or charitable purposes and which is operated, supervised, or controlled by or in connection with a religious organization, or an organization that has a mission statement, policies, or practices clearly demonstrating the organization is guided or motivated by faith.

SECTION 19. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO LEGISLATIVE ASSEMBLY. The department of corrections and rehabilitation may establish a pretrial services program as a pilot project in one or more judicial districts during the biennium beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must involve coordination among the department, the judicial branch, the commission on legal counsel for indigents, and state and local law enforcement agencies for the provision of pretrial services by the department for the district courts to individuals charged with felony offenses. Pretrial services include risk assessments, background and criminal history background investigations, recommendations for conditions of pretrial release, monitoring and supervision of individuals on pretrial release for compliance with pretrial conditions to assure the individual's appearance at all court proceedings, and reporting violations of pretrial release conditions to the district court. The department and the judicial branch shall provide a report of the process and outcome measures of the pretrial services program and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 20. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY. Before September 1, 2018, the department of corrections and rehabilitation and the supreme court shall provide a report to the legislative management regarding the progress of the justice reinvestment initiative. The department of corrections and rehabilitation and the supreme court shall provide a report on the progress of the justice reinvestment initiative to the sixty-sixth legislative assembly.

SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 16 and 17 of this Act, for the period beginning with the effective date of this section, and ending June 30, 2019.

SECTION 22. EFFECTIVE DATE. Sections 8 and 9 of this Act become effective January 1, 2018.

SECTION 23. EMERGENCY. Sections 1 through 5, 7, 10 through 17, and 21 of this Act are declared to be an emergency measure.

Approved April 21, 2017

Filed April 21, 2017

CHAPTER 109

HOUSE BILL NO. 1195

(Representatives Klemin, Maragos, Schneider)
(Senators Hogue, D. Larson, Mathern)

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to imprisonment of minors; to amend and reenact subsection 4 of section 12.1-20-03 of the North Dakota Century Code, relating to gross sexual imposition; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed unless the defendant was a juvenile at the time of the offense.

SECTION 2. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Juveniles - Sentencing - Reduction.

1. Notwithstanding any other provision of law, a court may reduce a term of imprisonment imposed upon a defendant convicted as an adult for an offense committed and completed before the defendant was eighteen years of age if:
 - a. The defendant has served at least twenty years in custody for the offense;
 - b. The defendant filed a motion for reduction in sentence; and
 - c. The court has considered the factors provided in this section and determined the defendant is not a danger to the safety of any other individual, and the interests of justice warrant a sentence modification.
2. A defendant whose sentence is reduced under this section must be ordered to serve a period of supervised release of at least five years upon release from imprisonment. The conditions of supervised release and any modification or revocation of the term of supervised release must be in accordance with this chapter.
3. When determining whether to reduce a term of imprisonment under this section, the court shall consider:
 - a. The factors provided in section 12.1-32-04, including the nature of the offense;
 - b. The age of the defendant at the time of the offense;

- c. A report and recommendation from the department of corrections and rehabilitation, including information relating to the defendant's ability to comply with the rules of the institution and whether the defendant completed any educational, vocational, or other prison programming;
 - d. A report and recommendation from the state's attorney for any county in which the defendant was prosecuted;
 - e. Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to re-enter society sufficient to justify a sentence reduction;
 - f. A statement by a victim or a family member of a victim who was impacted by the actions of the defendant;
 - g. A report of a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional;
 - h. The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
 - i. The role of the defendant in the offense and whether an adult also was involved in the offense;
 - j. The diminished culpability of juveniles compared to adults and the level of maturity and failure to appreciate the risks and consequences; and
 - k. Any additional information the court determines relevant.
4. A defendant may make a second motion for a reduction in sentence under this section no earlier than five years after the initial motion for reduction.
5. A defendant may make a final motion for a reduction in sentence no earlier than five years after the order for a second motion was filed.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 110

HOUSE BILL NO. 1058

(Representatives Paur, Trotter, K. Koppelman)
(Senators Hogue, Campbell)

AN ACT to amend and reenact subsection 7 of section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵³ **SECTION 1. 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 biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall ~~inform in writing register~~, within three days after the change, with the law enforcement agency with which that individual last registered of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall ~~inform in writing register~~, at least ten days before the change, with the law enforcement agency with which that individual last registered of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section, ~~the individual shall inform in writing register~~ within ~~five~~three days of the termination with the law enforcement agency with which the individual last registered. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local

⁵³ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1334, chapter 111, and section 1 of Senate Bill No. 2303, chapter 112.

jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of biometric data on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 111

HOUSE BILL NO. 1334

(Representatives Meier, Delmore, Karls, Klemin, Porter, Steiner)
(Senators Myrdal, Oehlke, Schaible)

AN ACT to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁴ **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
 - d. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
 - e. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

⁵⁴ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1058, chapter 110, and section 1 of Senate Bill No. 2303, chapter 112.

- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.
- g. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, 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.
- g-h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- h-i. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:
- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
- b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
- c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.

- d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
3. If a court has not ordered an individual to register in this state, an individual who resides, is homeless, or is temporarily domiciled in this state shall register if the individual:
 - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
 - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
 4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.
 5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon

discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.

6. An individual who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the individual expects to reside, attend school, or work upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release.
7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall 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 which that individual last registered of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section shall

inform in writing within five days of the termination the law enforcement agency with which the individual last registered. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of biometric data on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
 - a. A period of fifteen years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
 - b. A period of twenty-five years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
 - c. For the life of the individual, if that individual:
 - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
 - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim, or an equivalent offense from another court in the United States, a tribal court, or court of another country; or
 - (3) Is assigned a high risk by the attorney general as provided in subsection 12.
9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless individual to register as required in subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve

an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.

10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the individual revoked.
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:
 - a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
 - c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sexual offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
 - d. The attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
13. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.

14. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:

- a. Is required to register for a lifetime under subsection 8;
- b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
- c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

44-15. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.

45-16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the superintendent or principal of the school the juvenile attends. The school administration shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.

46-17. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.

47-18. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section.

Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 112

SENATE BILL NO. 2303

(Senators D. Larson, Luick, Schaible)
(Representatives Karls, Keiser)

AN ACT to amend and reenact subsections 2 and 7 of section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁵ **SECTION 1. AMENDMENT.** Subsections 2 and 7 of section 12.1-32-15 of the North Dakota Century Code are amended and reenacted as follows:

2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city of the individual's place of residence, or the sheriff of the county if the individual resides, ~~attends school, or is employed~~ in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:
 - a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
 - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.

⁵⁵ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1058, chapter 110, and section 1 of House Bill No. 1334, chapter 111.

- d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
- e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
7. Registration consists of a written or electronic statement signed by the individual, giving the information required by the attorney general, and the biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall inform in writing, within three days after the change, the law enforcement agency ~~with which that individual last registered~~ having local jurisdiction of the individual's place of residence of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall inform in writing, at least ten days before the change, the law enforcement agency ~~with which that individual last registered~~ having local jurisdiction of the individual's place of residence of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section shall inform in writing within five days of the termination the law enforcement agency ~~with which the individual last registered~~ having local jurisdiction of the individual's place of residence. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or

employment. Upon a change of address, the individual required to register also shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. If an individual required to register in North Dakota, including in a tribal registry, resides in another state or on tribal lands, that individual shall register employment and school addresses and any changes in required registration information with the law enforcement agency having local jurisdiction over the school or employment address. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of biometric data on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

SECTION 2. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the attorney general certifies to the legislative council that the registration process provided in section 1 of this Act is operational.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 113

HOUSE BILL NO. 1194

(Representatives Klemin, Heinert, K. Koppelman)
(Senators Hogue, D. Larson)

AN ACT to create and enact a new section to chapter 12.1-34 of the North Dakota Century Code, relating to providing a victim's rights card; and to amend and reenact subsections 6 and 10 of section 12.1-34-01, subsections 1, 2, and 6 of section 12.1-34-02, and subsection 1 of section 12.1-34-06 of the North Dakota Century Code, relating to treatment standards for victims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6 and 10 of section 12.1-34-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Family member" includes a spouse, child, sibling, parent, grandparent, grandchild, legal guardian, or custodian of a victim, and any person with a relationship to the victim which is substantially similar to a relationship specified in this section.
10. "Victim" means a natural person who has suffered direct or threatened physical, financial, or ~~emotional~~ psychological harm ~~where there is probable cause to believe that the harm has been caused by the commission of a criminal act as the result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed.~~ The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

⁵⁶ **SECTION 2. AMENDMENT.** Subsections 1, 2, and 6 of section 12.1-34-02 of the North Dakota Century Code are amended and reenacted as follows:

1. Informed by those entities that have contact with the victim or witness as to the availability of and the methods available for registration with the statewide automated victim information and notification system. Those entities include law enforcement, prosecuting attorneys, the courts, and custodial authorities. A victim or witness who clearly objects to registration may not be required to register with the system or must be able to opt out of the system. A victim has the right to:
 - a. Prevent the disclosure of confidential or privileged information about the victim or the victim's family; and
 - b. Be notified of any request for identifying information or confidential or privileged information about the victim or victim's family.
2. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case

⁵⁶ Section 12.1-34-02 was also amended by section 1 of House Bill No. 1345, chapter 308.

of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed. A victim, upon request, must be allowed to confer with the prosecuting attorney.

6. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hotlines, social service agencies, and domestic violence programs. Victims and witnesses must be informed of the right to seek the advice of an attorney. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of chapter 54-23.4.

SECTION 3. AMENDMENT. Subsection 1 of section 12.1-34-06 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~The information technology department may establish office of the attorney general shall maintain~~ a statewide automated victim information and notification system that must:
 - a. Permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public website.
 - b. Notify a registered victim by telephone, mail, text message, or electronic mail in accordance with this chapter.
 - c. Notify a registered victim by telephone, mail, text message, or electronic mail when the offender has a scheduled court proceeding, a parole review, or a change in the status of the offender's parole or probation status, including a change in the offender's address.
 - d. Notify a registered victim by telephone, mail, text message, or electronic mail when a protective order requested by the victim has been served upon the respondent.
 - e. Permit a victim to receive a status report for an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility by calling the system on a toll-free telephone number or by accessing the system through a public website.

SECTION 4. A new section to chapter 12.1-34 of the North Dakota Century Code is created and enacted as follows:

Victim's rights card.

The attorney general shall develop a card containing the rights of victims as provided in this chapter and section 25 of article I of the Constitution of North Dakota to be distributed to all crime victims.

Approved April 17, 2017

Filed April 17, 2017

DOMESTIC RELATIONS AND PERSONS

CHAPTER 114

HOUSE BILL NO. 1325

(Representative Owens)
(Senator Myrdal)

AN ACT to amend and reenact section 14-05-24 of the North Dakota Century Code, relating to the valuation date of property in a divorce.

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. Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first.
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 March 22, 2017

Filed March 23, 2017

CHAPTER 115

HOUSE BILL NO. 1057

(Representatives Owens, K. Koppelman, Olson, Streyle, Klemin, Marschall)
(Senators Laffen, Hogue)

AN ACT to create and enact a new section to chapter 14-05 of the North Dakota Century Code, relating to the confidentiality of property and debt listing information of the parties to a divorce.

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:

Property and debt listing information confidential - Exception.

1. Except as provided in subsections 2 and 3, the property and debt listing of the parties to a divorce which is filed with the court or included in a judgment for divorce is a confidential record.
2. Upon providing written notice to all parties, any person may file a motion, supported by affidavit showing good cause, for access to the property and debt listing contained in a judgment for divorce.
3. The court shall allow access to the property and debt listing, or relevant portions of the information, if the court finds the public interest in granting access or the personal interest of the person seeking access outweighs the privacy interests of the parties or the parties' dependent children. In granting access the court may impose conditions necessary to balance the interests consistent with this subsection.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 116

HOUSE BILL NO. 1402

(Representatives Schneider, P. Anderson, Delmore, Dobervich, Guggisberg, Hogan,
Mitskog)
(Senators Nelson, Oban)

AN ACT to amend and reenact subsection 4 of section 14-07.1-02 of the North Dakota Century Code, relating to the surrender of firearms or other dangerous weapons pursuant to domestic violence protection orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁷ **SECTION 1. AMENDMENT.** Subsection 4 of section 14-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
 - g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the

⁵⁷ Section 14-07.1-02 was also amended by section 5 of Senate Bill No. 2309, chapter 107.

respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides in the manner and at the time and place determined by that law enforcement officer. If the firearm or other dangerous weapon is not surrendered, the law enforcement officer may arrest the respondent pursuant to section 14-07.1-11 and take possession of the firearm or other dangerous weapon.

Approved March 30, 2017

Filed March 30, 2017

CHAPTER 117

SENATE BILL NO. 2161

(Senators Bekkedahl, Kannianen, Oehlke)
(Representatives Lefor, Sukut, Zubke)

AN ACT to amend and reenact section 14-07.1-18 of the North Dakota Century Code, relating to domestic violence program records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-18 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-18. Domestic violence or sexual assault program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information that relates only to that client or the client's dependents;
 - b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or

- d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.
3. The address, telephone number, and other identifying information of a shelter are exempt records as defined in section 44-04-17.1.
4. Any person who violates this section is guilty of an infraction.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 118

SENATE BILL NO. 2170

(Senators Hogue, D. Larson)
(Representatives Brabandt, Klemin)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact a new chapter to title 14 of the North Dakota Century Code, relating to the Uniform Recognition and Enforcement of Canadian Protection Orders Act; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 14 of the North Dakota Century Code is created and enacted as follows:

Definitions.

1. "Canadian domestic violence protection order" means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under the law of the issuing jurisdiction which relates to domestic violence and prohibits a respondent from:
 - a. Being in physical proximity to a protected individual or following a protected individual;
 - b. Directly or indirectly contacting or communicating with a protected individual or other individual described in the order;
 - c. Being within a certain distance of a specified place or location associated with a protected individual; or
 - d. Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.
2. "Domestic protection order" means an injunction or other order, issued by a tribunal under the domestic or family violence laws of the issuing court, to prevent an individual from engaging in violent or threatening acts against, harassment of, direct or indirect contact or communication with, or being in physical proximity to another individual.
3. "Issuing court" means the court that issues a Canadian domestic violence protection order.
4. "Protected individual" means an individual protected by a Canadian domestic violence protection order.
5. "Respondent" means the individual against whom a Canadian domestic violence protection order is issued.
6. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession

subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue domestic violence protection orders.

7. "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a domestic violence protection order.

Nonjudicial enforcement of order.

1. A law enforcement officer of this state, upon determining there is probable cause to believe a valid Canadian domestic violence protection order exists and that the order has been violated, shall enforce the Canadian domestic violence protection order as if it were the order of a tribunal of this state. Presentation of a record of a Canadian domestic violence protection order that identifies both a protected individual and a respondent and, on its face, is currently in effect, constitutes probable cause to believe that a valid order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.
2. If a record of a Canadian domestic violence protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe a valid Canadian domestic violence protection order exists.
3. If a law enforcement officer of this state determines an otherwise valid Canadian domestic violence protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the protected individual that the officer will make reasonable efforts to contact the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
4. If a law enforcement officer determines an individual is a protected individual, the officer shall inform the individual of available local victim services.
5. Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order under this chapter.

Judicial enforcement of order.

1. A tribunal may issue an order enforcing or refusing to enforce a Canadian domestic violence protection order on application of:
 - a. A person authorized by the law of this state other than this chapter to seek enforcement of a domestic protection order; or
 - b. A respondent.
2. A tribunal shall follow the procedures of this state for enforcement of a domestic protection order. An order entered under this section is limited to the enforcement of the terms of the Canadian domestic violence protection order as provided in this chapter.
3. A Canadian domestic violence protection order is valid if it:

- a. Identifies a protected individual and a respondent;
 - b. Is currently in effect;
 - c. Was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing court; and
 - d. Was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the issuing of the order, in a manner consistent with the rights of the respondent to due process.
4. An individual authorized under the law of this state to seek enforcement of a Canadian domestic violence protection order establishes a prima facie case for its validity by presenting an order valid on its face.
 5. Absence of any of the criteria for validity of a Canadian domestic violence protection order is an affirmative defense in an action seeking enforcement of the order.
 6. A tribunal of this state may enforce the provisions of a Canadian domestic violence protection order against a party to the order in which each party is a protected individual and respondent if:
 - a. The party seeking enforcement of the order filed a pleading requesting the order from the issuing court; and
 - b. The tribunal made specific findings that entitled the party to the enforcement sought.

Registration of order.

1. Any individual may register a Canadian domestic violence protection order in this state. To register the order, an individual shall present a certified copy of the order to any clerk of district court in this state.
2. Upon receipt of a Canadian domestic violence protection order, the clerk of the district court shall register the order in accordance with this section. After the order is registered, the clerk of district court shall furnish to the individual registering the order a certified copy of the registered order and transmit a copy of the order to the appropriate law enforcement agency.
3. A registered Canadian domestic violence protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this state.
4. An individual registering a Canadian domestic violence protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is currently in effect.
5. A registered Canadian domestic violence protection order may be entered in any existing state or federal registries of protection orders, in accordance with state or federal law.

6. A fee may not be charged for the registration of a Canadian domestic violence protection order or the correction or removal of a protection order.

Immunity.

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of district court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a Canadian domestic violence protection order or the detention or arrest of an alleged violator of a Canadian domestic violence protection order if the act or omission is done in good faith in an effort to comply with this chapter.

Other remedies.

Pursuing remedies under this chapter does not preclude a protected individual from pursuing other legal or equitable remedies against the respondent.

Penalty.

Violation of a Canadian domestic violence protection order under this chapter is a class A misdemeanor. A second or subsequent violation of a Canadian domestic violence protection order is a class C felony.

SECTION 2. APPLICATION. Section 1 of this Act applies to any Canadian domestic violence protection order issued before, on, or after August 1, 2017, including any continuing action for enforcement of a Canadian domestic violence protection order commenced before August 1, 2017. A request for enforcement of a Canadian domestic violence protection order brought after July 31, 2017, for violations of a Canadian domestic violence protection order occurring before August 1, 2017, is governed by the provisions of section 1 of this Act.

Approved March 30, 2017

Filed March 31, 2017

CHAPTER 119

SENATE BILL NO. 2277

(Senator Wardner)
(Representative Lefor)

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to child support obligations of incarcerated parents.

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:

Child support obligation of incarcerated parents.

1. A monthly support obligation established under any provision of this code and in effect after December 31, 2017, expires by operation of law upon incarceration of the obligor under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.
2. Notwithstanding subsection 1, a monthly support obligation may be established for an obligor who is incarcerated under a sentence of one hundred eighty days or longer if the obligation is based on actual income of the obligor and the moving party makes a prima facie showing that the obligor's income exceeds the minimum amount provided in the guidelines established under section 14-09-09.7.
3. As used in this section, "incarceration" means placement of an obligor in a custodial setting in which the obligor is not permitted to earn wages from employment outside the correctional facility, and does not include probation or work release.
4. The expiration of a monthly support obligation under subsection 1 does not affect any past-due support that is owed before the expiration of the obligation.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 120

HOUSE BILL NO. 1206

(Representatives McWilliams, Rick C. Becker, Hogan, Johnston, Kasper, K.
Koppelman, Lefor, Olson, Pyle, Schneider, Weisz)
(Senator J. Lee)

AN ACT to amend and reenact subsection 13 of section 14-15-01 and sections 14-15.1-01 and 14-15.1-04 of the North Dakota Century Code, relating to the investigation and report by a child-placing agency and the definition of relative; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 14-15-01 of the North Dakota Century Code is amended and reenacted as follows:

13. "Relative" means any individual having the following relationship to the minor by marriage, blood, or adoption: brother, sister, stepbrother, stepsister, first cousin, uncle, aunt, or grandparent.

SECTION 2. AMENDMENT. Section 14-15.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-15.1-01. Definitions.

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

1. "Birth parent" means the woman who gave birth to a child, any man alleged by that woman to be the biological father of that child, or any man presumed by law or judicially determined to be the biological father of that child.
2. "Child-placing agency" means an agency licensed under chapter 50-12.
3. "Court" means the district court of this state.
4. "Department" means the department of human services.
5. "Identified adoptive parent" means the person or persons eligible under section 14-15-03 to adopt a child and who has been selected by a birth parent to adopt a specific child.
6. "Relative" means a brother, sister, stepbrother, stepsister, first cousin, uncle, aunt, or grandparent of the child by marriage, blood, or adoption.

SECTION 3. AMENDMENT. Section 14-15.1-04 of the North Dakota Century Code is amended and reenacted as follows:

14-15.1-04. Report of child-placing agency.

1. Before a hearing under this chapter, the report of a child-placing agency must be filed with the court. The child-placing agency shall serve a copy of the

report upon the birth parent, the identified adoptive parent, the guardian ad litem, and the department at least seven days before the hearing. The Except as provided in subsection 2, the report must include the following:

1. a. A recommendation as to whether the home of the identified adoptive parent is a suitable home for the placement of the child.
2. b. A preplacement adoption assessment indicating how the identified adoptive parent's emotional maturity, finances, health, relationships, criminal history record, and any other relevant factors may affect the identified adoptive parent's ability to accept, care for, and provide the child with an adequate environment in which to mature.
3. c. The medical and social history of the birth parent, including an assessment regarding the birth parent's understanding and acceptance of the action.
4. d. If the child has been born before the filing of the report, a medical and developmental history of the child.
2. If the identified adoptive parent is a relative of the child, the report of a child-placing agency must include:
 - a. An assessment and recommendation of the criminal history record of the identified adoptive parent and any adult living in the home of the adoptive parent.
 - b. Written credible character statements from three adult witnesses. Each statement must be acknowledged before a notary public and include:
 - (1) The relationship of the witness to the identified parent;
 - (2) The relationship, love, and other emotional ties existing between the child and the identified adoptive parent;
 - (3) The emotional maturity and moral character of the identified adoptive parent;
 - (4) The sufficiency and stability of the identified adoptive parent's home environment;
 - (5) The ability of the identified adoptive parent to provide food, clothing, shelter, and medical care for the child; and
 - (6) The mental and physical health of the identified adoptive parent, if known.
 - c. The medical and social history of the birth parent, including an assessment regarding the birth parent's understanding and acceptance of the action.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ADOPTION. During the 2017-18 interim, the legislative management shall consider studying adoption by an identified or an unidentified adoptive parent. The study must include an evaluation and a comparison of the adoptive process and procedure, expenses, duration, and state tax credits and deductions associated with adoption by an identified or an unidentified adoptive parent. The legislative management shall report its findings and

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

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 121

SENATE BILL NO. 2248

(Senators Oban, Dever, Oehlke)
(Representatives Beadle, Nathe, Hanson)

AN ACT to create and enact a new subsection to section 14-15-19 of the North Dakota Century Code, relating to relinquishment and termination of parent and child relationship.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 14-15-19 of the North Dakota Century Code is created and enacted as follows:

- a. If the identity of the father or mother is known and an address for service is also known, or the address can be ascertained with reasonable diligence, the father or mother must be personally served the petition and notice for termination of parental rights in compliance with the North Dakota Rules of Civil Procedure.
- b. If the identity of the father or mother is unknown but the father's or mother's location is known, and the identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which the unknown father or mother is located.
- c. If the identity and location of the father or mother are unknown and the location and identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which conception occurred.
- d. The last publication as required under this subsection must be at least ten days before the time set for hearing. Proof of publication of the notice must be made at or before the hearing and filed in the proceeding.

Approved April 5, 2017

Filed April 5, 2017

EDUCATION

CHAPTER 122

SENATE BILL NO. 2102

(Government and Veterans Affairs Committee)
(At the request of the Department of Trust Lands)

AN ACT to amend and reenact sections 15-02-02, 15-02-05.1, and 54-01-05.5 of the North Dakota Century Code, relating to the commissioner of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-02-02 of the North Dakota Century Code is amended and reenacted as follows:

15-02-02. Term of office - Vacancy.

The term of office of the commissioner is four years beginning July first of the year following the general election of the ~~board members~~ governor and ending June thirtieth of the fourth calendar year after appointment or until a successor is appointed and qualified. The commissioner may be removed for cause at any time during the commissioner's term of office, by a vote of four or more board members. Upon vacancy by death, resignation, or removal, the board shall appoint a commissioner for the remainder of the four-year term.

SECTION 2. AMENDMENT. Section 15-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

15-02-05.1. Additional duties of commissioner.

In all cases under section 54-01-05.5 involving legislative bills dealing with the sale or exchange of state land, the commissioner of university and school lands ~~shall~~ may provide the legislative assembly with an ~~opinion as to whether the sale or exchange in question is consistent with~~ assessment regarding the highest and best use of the land involved. ~~As an aid in making the determination, the commissioner shall classify all land owned by the state or its instrumentalities according to its highest and best use. As used in this section, "highest and best use" means that use of a parcel of land which will most likely produce the greatest benefit to the state and its inhabitants, and which will best meet the needs of the people. In making this determination, the considerations of the commissioner shall~~ The commissioner's assessment may include an evaluation of soils capability, vegetation, wildlife use, mineral characteristics, public use, recreational use, commercial or industrial use, aesthetic values, cultural values, surrounding land use, ~~nearness to~~ expanding proximity to urban areas, and any other relevant resource, zoning, or planning information relevant to the determination.

SECTION 3. AMENDMENT. Section 54-01-05.5 of the North Dakota Century Code is amended and reenacted as follows:

54-01-05.5. Bills authorizing sale or exchange of state-owned land - Written report - ~~Opinion~~Assessment.

1. The supervising agency, board, commission, department, or institution owning or controlling land proposed by a bill introduced in the legislative assembly to be sold or exchanged shall prepare a written report that includes:
 - a. An analysis of the type of land involved.
 - b. A determination whether the land is needed for present or future uses of the agency, board, commission, department, or institution.
 - c. A description of the party or parties, if known, who are interested in the land and the purposes for which the land is desired.
 - d. A map showing the boundaries of the land proposed to be sold or exchanged and the purposes for which the adjacent lands are used.
2. The commissioner of university and school lands shall review each legislative bill proposing the sale or exchange of state-owned land and the written report from the supervising agency, board, commission, department, or institution. The commissioner ~~shall then issue~~may provide a written ~~opinion~~assessment to the standing committee of the legislative assembly to which the bill is initially referred concerning the proposed land sale or exchange and, in doing so, shall consider the "highest and best use" of the land as defined by section 15-02-05.1.
3. The commissioner may adopt rules to provide for administration of this section.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 123

HOUSE BILL NO. 1030

(Legislative Management)
(Government Finance Committee)

AN ACT to amend and reenact section 15-10-12.1 of the North Dakota Century Code, relating to higher education campus improvements and building construction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

15-10-12.1. Acceptance of buildings and campus improvements - Legislative approval.

The state board of higher education may authorize campus improvements and building maintenance on land under the control of the board which are financed by donations, gifts, grants, and bequests if the cost of the improvement or building maintenance is not more than three hundred eighty-five seven hundred thousand dollars. The consent of the legislative assembly is required for construction of any building or any addition to a building on land under the control of the board which is financed by donations, gifts, grants, and bequests and The consent of the legislative assembly is required for campus improvements or building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvements or maintenance is more than three hundred eighty-five seven hundred thousand dollars. During the time the legislative assembly is not in session, except for the six months preceding the convening of a regular session and the three months following the close of a regular session, and unless otherwise restricted by previous legislative action or other law, the state board of higher education, with the approval of the budget section of the legislative management, may authorize the use of land under the control of the board and construct buildings financed by donations, gifts, grants, and bequests and campus improvements and building maintenance financed by donations, gifts, grants, and bequests and if the cost of the improvement or maintenance is more than three hundred eighty-five seven hundred thousand dollars. The budget section approval must include a specific dollar limit for each building, campus improvement project, or maintenance project. The state board of higher education may authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. The board shall prescribe such conditions for the sale of the property as it determines necessary. The conditions must include requiring an appraisal and public auction or advertisement for bids, unless the gift instrument requires a different process. If the state board of higher education submits a request for campus improvements, or building maintenance, or to construct buildings under this section to the budget section for approval, the legislative council shall notify each member of the legislative assembly of the date of the budget section meeting at which the request will be considered and provide a copy of the meeting agenda to each member of the legislative assembly. The chairman of the budget section shall allow any member of the legislative assembly an opportunity to present testimony to the budget section regarding any such request.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 124

HOUSE BILL NO. 1171

(Representatives Beadle, Kading, Louser)
(Senators Casper, D. Larson, Meyer)

AN ACT to amend and reenact section 15-10-18.4 of the North Dakota Century Code, relating to extending the benefits of free tuition at state institutions of higher education to a stepchild of a peace officer killed in the line of duty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-18.4 of the North Dakota Century Code is amended and reenacted as follows:

15-10-18.4. Definitions.

For purposes of section 15-10-18.5:

1. "Firefighter" means a person who is a member of a paid or volunteer fire department that is a part of, or administered by, this state, any political subdivision of this state, or a rural fire protection district.
2. "Peace officer" means any person who is employed by a state law enforcement agency or a political subdivision of the state who is charged with the prevention and detection of crime and the enforcement of the criminal laws of the state, and who has full power of arrest.
3. "Stepchild" means a child of the decedent's spouse or predeceased spouse, and not of the decedent.
4. "Survivor" means, at the time of the firefighter's or peace officer's death, the children firefighter's or peace officer's biological or adopted child under the age of twenty-one, stepchild under the age of twenty-one, and the spouse of a firefighter or peace officer at the time of the firefighter's or peace officer's death.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 125

SENATE BILL NO. 2037

(Legislative Management)
(Higher Education Committee)

AN ACT to amend and reenact sections 15-10-37 and 15-10-38 of the North Dakota Century Code, relating to the technology occupations student loan and teacher shortage loan forgiveness programs; to provide a statement of legislative intent; and to provide for reports to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-37 of the North Dakota Century Code is amended and reenacted as follows:

15-10-37. Technology occupations student loan program.

1. The state board of higher education shall administer a science, technology, engineering, and mathematics occupations student loan program that encourages college students to pursue studies in these fields, to participate in internship programs, and to remain in the state after graduation. The board shall adopt rules to implement the program, including internship requirements, guidelines to determine which technology-related courses of study are eligible under the program, and standards for eligibility.
2. Graduates of board-approved colleges may apply for the technology occupations student loan program. To be eligible to receive student loan grants under the program, the applicant:
 - a. Must have graduated from a board-approved college;
 - b. Must have successfully completed the board-approved technology-related courses;
 - c. Must have maintained at least a 2.5 grade point average, based on a 4.0 grading system, at a board-approved college;
 - d. Must have a student loan with the Bank of North Dakota or other participating lender;
 - e. Following graduation must be employed in the state in a board-approved technology occupation with a salary or equivalent hourly wage of sixty thousand dollars or less per year; and
 - f. Must have met and shall continue to meet any requirements established by rule.
3. The state board of higher education shall distribute student loan grants directly to the Bank of North Dakota or other participating lender to repay outstanding student loan principal balances for eligible applicants. The maximum student loan grant amount for which an applicant may qualify is one thousand five

hundred dollars per year and a total of six thousand dollars, or a lesser amount established by rule adopted by the state board of higher education.

4. If an individual is receiving loan forgiveness under any other provision, the individual may not receive loan forgiveness under this section during the same application year.

⁵⁸ **SECTION 2. AMENDMENT.** Section 15-10-38 of the North Dakota Century Code is amended and reenacted as follows:

15-10-38. Loans - Teacher shortages - Loan forgiveness.

1. ~~The state board of higher education shall administer a student loan forgiveness program for individuals teaching at grade levels or in content areas identified as having a teacher shortage. The board shall adopt rules to implement the program.~~
2. ~~The superintendent of public instruction shall annually identify the grade levels and content areas in which a teacher shortage exists.~~
3. ~~To be eligible for loan forgiveness under this section, an individual:~~
 - a. ~~Must have been admitted as a full-time student in a teacher preparation program, with the declared intention to teach at a grade level or in a content area identified by the superintendent of public instruction as one in which a teacher shortage exists; and~~
 - b. ~~Must have obtained a student loan.~~
4. ~~An individual may receive up to one thousand dollars per year and a maximum of five thousand dollars, or a lesser amount established by rule adopted by the state board of higher education under this section.~~
5. ~~The board shall consider all applications under this section in chronological order.~~
6. ~~Upon notification that the individual has completed a full year of teaching in a school district or nonpublic school in this state at a grade level or in a content area identified by the superintendent of public instruction as one in which a teacher shortage exists, the board shall distribute funds directly to the Bank of North Dakota to repay outstanding loan principal balances for eligible applicants. The state board of higher education shall administer a student loan forgiveness program for individuals teaching at grade levels, in content areas, and in geographical locations identified as having a teacher shortage or critical need. The board may approve loan forgiveness for no more than two teachers per year in a school district. The board shall adopt rules to implement the program.~~
2. The superintendent of public instruction annually shall identify grade levels, content areas, and geographical locations in which a teacher shortage or critical need exists.
3. To be eligible for loan forgiveness under this section, an individual:

⁵⁸ Section 15-10-38 was also amended by section 21 of House Bill No. 1015, chapter 14.

- a. Must have graduated from an accredited teacher preparation program and signed a contract to teach at a grade level or in a content area and in a geographical location identified by the superintendent of public instruction as having an existing teacher shortage or critical need; and
- b. Must have an existing student loan.
4. For purposes of this section, the definitions of rural school district and remote town school district have the same meaning as the definitions under the national center for education statistics locale codes.
5. If an individual is receiving loan forgiveness under any other provision, the individual may not receive loan forgiveness under this section during the same application year.
6. An eligible individual may receive loan forgiveness under the program as follows:
 - a. If the individual accepts one of up to five positions of critical need in a nonrural school district or nonremote town school district, the individual may receive up to three thousand dollars per year for a maximum of four years.
 - b. If the individual accepts a position in a rural school district or remote town school district with an enrollment of fewer than one thousand students, the individual may receive up to four thousand five hundred dollars per year for a maximum of four years.
 - c. If the individual accepts one of up to five positions of critical need in a rural school district or remote town school district with an enrollment of fewer than one thousand students, the individual may receive up to six thousand five hundred dollars per year for a maximum of four years.
7. The superintendent of public instruction shall consider all applications under this section based on the number of unfilled school vacancies, prioritized by critical need and geographic location.
8. Upon notification the individual has completed a full year of teaching in a school district or state-supported school in this state at a grade level or in a content area and in a geographical location identified by the superintendent of public instruction as one in which a teacher shortage or critical need exists, the board shall distribute funds directly to the lending institution of the individual to repay outstanding loan principal balances on behalf of eligible applicants. The board shall terminate loan forgiveness payments to eligible individuals when the loan principal balance of the eligible individual is paid in full.

SECTION 3. LEGISLATIVE INTENT - EDUCATION INCENTIVE PROGRAMS. It is the intent of the sixty-fifth legislative assembly that subdivision 1 of section 1 of 2017 Senate Bill No. 2003 include the sum of \$2,863,393, or so much of the sum as may be necessary, from the general fund, for the purpose of providing funding of \$260,000 for doctorate graduate programs, \$500,000 for the technology occupations student loan program, and \$2,103,393 for the teacher shortage loan forgiveness program, with no more than one-half of that amount expended in the first year, during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. SUPERINTENDENT OF PUBLIC INSTRUCTION - LEGISLATIVE MANAGEMENT REPORT. During the 2017-19 biennium, the superintendent of public instruction shall provide annual reports to the legislative management regarding the use of teacher loan forgiveness funds received under this Act, including the amount distributed, the number of eligible individuals receiving funds, the recruitment and retention of individuals participating in the program, the average starting salaries of individuals participating in the program, and the effectiveness of the program as determined under criteria developed by the superintendent of public instruction.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 126

SENATE BILL NO. 2201

(Senators Rust, Luick, Oban)
(Representatives Devlin, Schreiber-Beck, Mock)

AN ACT to amend and reenact sections 15-10-55 and 15.1-19-25 of the North Dakota Century Code, relating to the freedom of expression of student journalists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-55 of the North Dakota Century Code is amended and reenacted as follows:

15-10-55. Student journalists - Freedom of expression - Civil remedy.

1. As used in this section:

a. "Protected activity" means an expression of free speech or freedom of the press.

b. "School-sponsored media" means any material that is prepared, substantially written, published, or broadcast by a student journalist at an institution under the supervision of the state board a public institution of higher education, distributed or generally made available to members of the student body, and prepared under the direction of a student media adviser. The term does not include any media intended for distribution or transmission solely in the classroom in which the media is produced.

b-c. "Student journalist" means a student of an institution under the supervision of the state board a public institution of higher education who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.

e-d. "Student media adviser" means an individual employed, appointed, or designated by an institution under the supervision of the state board a public institution of higher education to supervise or provide instruction relating to school-sponsored media.

2. Except as provided in subsection 3, a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media, regardless of whether the media is supported financially by the institution or by use of facilities of the institution or produced in conjunction with a class in which the student is enrolled. Subject to subsection 3, a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. This subsection may not be construed to prevent a student media adviser from teaching professional standards of English and journalism to student journalists. A student media adviser may not be dismissed, suspended, or disciplined for acting to protect a student journalist engaged in a protected activity or for refusing to infringe on a protected activity.

3. This section does not authorize or protect expression by a student that:
 - a. Is libelous or, slanderous, or obscene;
 - b. Constitutes an unwarranted invasion of privacy;
 - c. Violates federal or state law; or
 - d. So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of institution or state board of higher education policies, or the material and substantial disruption of the orderly operation of the institution.
4. An expression of free speech or freedom of the press made by a student journalist under this section may not be construed as an expression of school policy. A school, school official, employee, or parent or legal guardian of a student journalist may not be liable in any civil or criminal action for an expression of free speech or freedom of the press made by a student journalist, except in the case of willful or wanton misconduct.

SECTION 2. AMENDMENT. Section 15.1-19-25 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-25. Student journalists - Freedom of expression - Civil remedy.

1. As used in this section:
 - a. "Protected activity" means an expression of free speech or freedom of the press.
 - b. "School-sponsored media" means any material that is prepared, substantially written, published, or broadcast by a student journalist at a public school, distributed or generally made available to members of the student body, and prepared under the direction of a student media adviser. The term does not include any media intended for distribution or transmission solely in the classroom in which the media is produced.
 - b-c. "Student journalist" means a public school student who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.
 - e-d. "Student media adviser" means an individual employed, appointed, or designated by a school district to supervise or provide instruction relating to school-sponsored media.
2. Except as provided in subsection 3, a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media, regardless of whether the media is supported financially by the school district, by use of facilities of the school district, or produced in conjunction with a class in which the student is enrolled. Subject to subsection 3, a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. This subsection may not be construed to prevent a student media adviser from teaching professional standards of English and journalism to student journalists. A student media adviser may not be dismissed, suspended, or disciplined for acting to protect a

student journalist engaged in a protected activity or for refusing to infringe on a protected activity.

3. This section does not authorize or protect expression by a student that:
 - a. Is libelous or, slanderous, or obscene;
 - b. Constitutes an unwarranted invasion of privacy;
 - c. Violates federal or state law; or
 - d. So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of school district policy, or the material and substantial disruption of the orderly operation of the school.
4. A school district may not authorize any prior restraint of any school-sponsored media except when the media:
 - a. Is libelous or, slanderous, or obscene;
 - b. Constitutes an unwarranted invasion of privacy;
 - c. Violates federal or state law; or
 - d. So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of school district policies, or the material and substantial disruption of the orderly operation of the school.
5. A school district may not sanction a student operating as an independent journalist.
6. Each school district shall adopt a written student freedom of expression policy in accordance with this section. The policy must include reasonable provisions for the time, place, and manner of student expression. The policy may also include limitations to language that may be defined as profane, harassing, threatening, or intimidating. An expression of free speech or freedom of the press made by a student journalist under this section may not be construed as an expression of school policy. A school, school official, employee, or parent or legal guardian of a student journalist may not be liable in any civil or criminal action for an expression of free speech or freedom of the press made by a student journalist, except in the case of willful or wanton misconduct.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 127

SENATE BILL NO. 2244

(Senators Schaible, Rust, Oban)
(Representatives D. Johnson, Nathe, Owens)

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to a pilot program to create an incentive for instructors to teach dual-credit courses; and to provide an appropriation.

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:

Dual-credit courses - Pilot program.

1. The state board of higher education shall establish a four-year pilot program to offer a credit incentive to instructors teaching dual-credit courses in core subject matter areas at public or private high schools in the state. An instructor who participates in the program is entitled to receive a credit-for-credit coupon that may be used toward graduate level classes at a public or private postsecondary education institution in the state. The board shall provide a qualified participant with a coupon that covers the cost of tuition for one graduate level credit in an amount not exceeding the tuition charged for the credit at the institution in which the participant is enrolled, except the amount may not exceed the highest tuition for a graduate level credit charged at an institution of higher education under the control of the state board of higher education, for every credit-hour of a dual-credit course the individual teaches. An individual is eligible for the program if the individual teaches a concurrent dual enrollment class at a public or private high school in the state and the class includes at least four students receiving dual credit.
2. If an individual eligible for a credit coupon offered under this section has met accreditation qualification standards, the individual may transfer a credit coupon to a family member or to a student being taught by the individual.
3. The state board of higher education shall develop a long-term sustainability plan for the program and, if determined necessary, continue the program for up to five additional years.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the student loan trust fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the state board of higher education for the purpose of creating a dual-credit courses pilot program, for the biennium beginning July 1, 2017, and ending June 30, 2019.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 128

HOUSE BILL NO. 1231

(Representatives Klemin, Hatlestad, Headland, Mitskog)
(Senators Anderson, Dever, Laffen)

AN ACT to repeal section 15-12-12 of the North Dakota Century Code, relating to North Dakota state university newspaper publications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 15-12-12 of the North Dakota Century Code is repealed.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 129

SENATE BILL NO. 2030

(Legislative Management)
(Education Committee)

AN ACT to amend and reenact subsection 14 of section 10-04-05, subsection 14 of section 10-04-06, subdivision b of subsection 12 of section 15-39.1-04, subdivision a of subsection 1 of section 15-39.1-05.1, subsection 3 of section 15.1-01-01, subdivision e of subsection 2 of section 15.1-02-21, and subdivision b of subsection 5 of section 15.1-06-18 of the North Dakota Century Code, relating to updating statutory references to the North Dakota education association; and to repeal section 15.1-32-23 of the North Dakota Century Code, relating to the credentialing process for special education teachers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 10-04-05 of the North Dakota Century Code is amended and reenacted as follows:

14. Securities issued by ~~the North Dakota education association~~united dues credit trust to members of the North Dakota ~~education association~~united.

SECTION 2. AMENDMENT. Subsection 14 of section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

14. The offer or sale of a security issued by ~~the North Dakota education association~~united dues credit trust to members of ~~the North Dakota education association~~united.

SECTION 3. AMENDMENT. Subdivision b of subsection 12 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

- b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the center for distance education, the executive director and professional staff of ~~the North Dakota education association~~united who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.

SECTION 4. AMENDMENT. Subdivision a of subsection 1 of section 15-39.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. The governor shall appoint, from a list of three nominees submitted to the governor by ~~the North Dakota education association~~united, two board members who are actively employed as elementary or secondary teachers in full-time positions not classified as school administrators. A board member appointed under this subdivision who terminates employment may not continue to serve as a member of the board.

SECTION 5. AMENDMENT. Subsection 3 of section 15.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

3. The governor shall appoint new board members from a list of names submitted by a committee consisting of the president of the ~~North Dakota education association~~united, the president of the North Dakota council of educational leaders, and the president of the North Dakota school boards association. Two of the state board members must be members of the North Dakota school boards association.

SECTION 6. AMENDMENT. Subdivision e of subsection 2 of section 15.1-02-21 of the North Dakota Century Code is amended and reenacted as follows:

- e. A representative of the ~~North Dakota education association~~united;

SECTION 7. AMENDMENT. Subdivision b of subsection 5 of section 15.1-06-18 of the North Dakota Century Code is amended and reenacted as follows:

- b. Two ~~individuals~~actively employed elementary or secondary teachers selected by the governor from a list of five nominees proposed by the ~~North Dakota education association~~united.

SECTION 8. REPEAL. Section 15.1-32-23 of the North Dakota Century Code is repealed.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 130

SENATE BILL NO. 2299

(Senators Mathern, Erbele)
(Representatives J. Nelson, Delmore)

AN ACT to amend and reenact section 15-52-03 of the North Dakota Century Code, relating to the members of the university of North Dakota school of medicine and health sciences advisory council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-52-03 of the North Dakota Century Code is amended and reenacted as follows:

15-52-03. School of medicine and health sciences advisory council - Members, terms, meetings.

1. To assure the proper coordination of the university of North Dakota school of medicine and health sciences with all other health activities of the state, a permanent school of medicine and health sciences advisory council is established to perform the duties in section 15-52-04.
2. The council consists of ~~fifteensixteen~~ sixteen 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 hospital association;
 - (6) The veterans administration hospital in Fargo; ~~and~~
 - (7) The North Dakota center for nursing; and
 - (8) 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 medical association ~~and~~ the North Dakota hospital association, and the North Dakota center for nursing shall serve a term of three years or until their successors are named and qualified.
4. The council shall name its own chairman and the dean of the university of North Dakota school of medicine and health sciences shall serve as executive secretary of the council. The executive secretary does not have voting privileges. The council shall meet not less than twice each year, and, from time to time, on its own motion or upon request of the university administration.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 131**HOUSE BILL NO. 1036**

(Legislative Management)
(Higher Education Committee)

AN ACT to repeal section 15-62.4-04 of the North Dakota Century Code, relating to the student financial assistance program advisory board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 15-62.4-04 of the North Dakota Century Code is repealed.

Approved March 22, 2017

Filed March 23, 2017

ELEMENTARY AND SECONDARY EDUCATION

CHAPTER 132

SENATE BILL NO. 2186

(Senators Poolman, D. Larson, Oban)
(Representatives D. Johnson, Schreiber-Beck, Guggisberg)

AN ACT to create and enact a new section to chapter 15.1-06 of the North Dakota Century Code, relating to the creation of an innovative education program; to amend and reenact section 15.1-06-08.1 of the North Dakota Century Code, relating to statutory waivers; and to provide for a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-06-08.1 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-08.1. Statutes - Waiver.

1. The superintendent of public instruction may not waive any statute, in whole or in part, except as provided for in this section.
2. A school or school district may apply to the superintendent of public instruction for a waiver of ~~section 15.1-21-03~~ chapters 15-20.1, 15.1-06, 15.1-18, 15.1-20, 15.1-21, 15.1-22, 15.1-25, 15.1-32, and 15.1-38, provided or any associated rules, if the waiver:
 - a. ~~Encourages innovation; and~~ improves the delivery of education;
 - b. ~~Has the potential to result in improved educational opportunities or enhanced academic opportunities for the students~~ improves the administration of education;
 - c. Provides increased educational opportunities for students; or
 - d. Improves the academic success of students.
3. The initial waiver must be for a specific period of time but may not exceed one year. The school district may apply for extensions of the waiver. The first extension may not exceed a period of one year. Additional extensions may not exceed periods of two years.
4. If the superintendent of public instruction, after receipt and consideration of an application for a waiver under this section, approves the waiver, the superintendent shall file a report with the legislative ~~council~~ management. The report must provide a detailed account of the reasons for which the waiver was granted and the specific time period for the waiver. If the superintendent

of public instruction denies an application for a waiver under this section, the superintendent shall file a notice of denial with the legislative council management. If requested, the superintendent shall appear and respond to questions regarding the approval or denial of any application for a waiver under this section.

5. The superintendent of public instruction shall adopt rules governing the submission and evaluation of applications and the monitoring of any school or school district that receives a waiver under this section.

SECTION 2. A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

Innovative education program - Participation - Reports to legislative management.

1. The superintendent of public instruction shall adopt rules to administer this section and develop criteria for the submission, approval, and evaluation of the proposals and plans under this section.
2. The superintendent of public instruction may accept a proposal from any public or nonpublic school, upon approval by the school board or governing board, for participation in an innovative education program. The proposal must include evaluation criteria and specify the innovations to be pursued at the school or school district level and the manner in which the proposal will:
 - a. Improve the delivery of education;
 - b. Improve the administration of education;
 - c. Provide increased educational opportunities for students; or
 - d. Improve the academic success of students.
3. The superintendent of public instruction may approve the proposal, reject the proposal, or work with the submitting school to modify the proposal.
4. During the school's initial year of participation in the innovative education program, the school shall develop a comprehensive implementation plan and work with the superintendent of public instruction to ensure the long-term viability of the proposal.
5. The superintendent of public instruction may approve the comprehensive implementation plan developed under subsection 4 for a period of up to five years. If, due to a change in circumstances, there is a determination by either the school or the superintendent of public instruction that modifications to the comprehensive implementation plan are necessary, the school and the superintendent of public instruction shall work with each other to achieve the necessary modifications.
6. The superintendent of public instruction may revoke any waiver granted under section 15.1-06-08.1 if the superintendent of public instruction determines the school has failed to perform in accordance with the agreed upon terms of the program or failed to meet the requirements of this section.

7. Any school participating in the program shall provide program evaluation data to the superintendent of public instruction at the time and in the manner requested by the superintendent of public instruction.
8. The superintendent of public instruction shall provide annual reports to the legislative management regarding the innovative education program, including:
 - a. The status of the implementation plan;
 - b. A summary of any waived statutes or rules; and
 - c. A review of evaluation data results.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 133

SENATE BILL NO. 2249

(Senators Poolman, Campbell, Holmberg)
(Representative Delmore)

AN ACT to create and enact a new section to chapter 15.1-09 of the North Dakota Century Code, relating to prohibiting participation in extracurricular activities by students who have committed a criminal offense.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

Student misconduct - Prohibition against participation in extracurricular activities.

1. The board of a school district shall prohibit a student from participating in any extracurricular activity if:
 - a. The student has pled guilty to or been convicted of a criminal offense and sentenced under section 12.1-32-02.1 or pled guilty or been convicted of an offense specified in subsection 1 of section 12.1-32-09.1;
 - b. The student has:
 - (1) An order prohibiting contact issued against the student at the request of another student or employee of the school under section 12.1-31.2-02;
 - (2) A disorderly conduct restraining order issued against the student at the request of another student or employee of the school under section 12.1-31.2-01, except a temporary restraining order under subsection 4 of section 12.1-31.2-01; or
 - (3) A protection order issued against the student at the request of another student or employee of the school, except a temporary protection order under section 14-07.1-03;
 - c. The principal of the school receives information pertaining to an offense or order included under this section as provided in subsection 2 of section 27-20-51; or
 - d. The victim of the offense or the subject of the order notifies the principal of the offense or order.
2. For purposes of this section, a representative of the juvenile court system may notify the principal of a school regarding the existence of files or records of the juvenile court pertaining to a student of the school which are open to inspection by the principal under subsection 2 of section 27-20-51.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 134

SENATE BILL NO. 2182

(Senators Vedaa, Kannianen, Rust, Oban)
(Representatives C. Johnson, D. Ruby)

AN ACT to amend and reenact section 15.1-09-34 of the North Dakota Century Code, relating to required bidding for certain school board purchases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building construction projects under chapter 48-01.2.
 - g. School transportation services purchased under section 15.1-30-11.
 - h. Vehicle fuel purchased under section 15.1-09-34.1.
 - i. Heating fuel purchased under section 15.1-09-34.1.
 - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
 - k. Cooperative purchases with the office of management and budget under chapter 54-44.4.
 - l. The purchase of products from prison industries under chapter 12-48.

m. The purchase of products from work activity centers under chapter 25-16.2.

2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

Approved March 15, 2017

Filed March 16, 2017

CHAPTER 135

HOUSE BILL NO. 1324

(Representatives Owens, Monson, Nathe, Sanford, Schreiber-Beck)
(Senators Rust, Schaible)

AN ACT to create and enact a new section to chapter 15.1-09.1 of the North Dakota Century Code, relating to audits of regional education associations; to amend and reenact sections 15.1-01-03, 15.1-09.1-10, and 15.1-27-04.1 of the North Dakota Century Code, relating to the powers and duties of the state board of public school education and the determination of state aid payable to school districts and regional education associations; to provide statements of legislative intent; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

15.1-01-03. State board of public school education - Powers and duties.

1. The state board of public school education shall:
 - a. Assist county committees in carrying out their duties.
 - b. Provide county committees with clerical assistance, plans of procedure, standards, data, maps, forms, and other materials, information, and services.
 - c. Appoint members to the county committee, if the county superintendent does not fulfill this duty, as provided for in section 15.1-10-01.
 - d. Provide oversight for regional education associations as required by chapter 15.1-09.1.
2. The state board of public school education may adopt rules ~~regarding school district reorganizations, annexations, and dissolutions in accordance with chapter 28-32.~~

SECTION 2. A new section to chapter 15.1-09.1 of the North Dakota Century Code is created and enacted as follows:

Regional education association - Audit.

To be eligible for state funding, a regional education association must be audited, at least once every two years, by a certified public accountant or a licensed public accountant. The audit must be presented to the state board of public school education. If any irregularities are noted, the state board of public school education may direct the superintendent of public instruction to withhold all payments to a regional education association until the board determines the irregularities have been addressed.

SECTION 3. AMENDMENT. Section 15.1-09.1-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09.1-10. State aid - Payable to a regional education association - Obligation of district.

1. The superintendent of public instruction shall forward the portion of a school district's state aid which is payable by the superintendent under subdivision l of subsection 1 of section 15.1-27-03.1 as a result of the district's participation in a regional education association directly to the association in which the district participates. The superintendent shall forward the amount payable under this ~~subsection~~section at the same time and in the same manner as provided for other state aid payments under section 15.1-27-01, unless otherwise directed in accordance with section 2 of this Act.
2. ~~If the superintendent of public instruction determines that a school district failed to meet any contractual or statutory obligation imposed upon it as a result of the district's participation in a regional education association, the superintendent shall subtract the amount for which the district was not eligible from any future distribution of state aid to the district under section 15.1-27-01.~~

SECTION 4. AMENDMENT. Section 15.1-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-04.1. Baseline funding - Establishment - Determination of state aid.

1. ~~In order to~~To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
 - a. All state aid received by the district in accordance with chapter 15.1-27 during the 2012-13 school year;
 - b. The district's 2012-13 mill levy reduction grant, as determined in accordance with chapter 57-64, as it existed on June 30, 2013;
 - c. An amount equal to that raised by the district's 2012 general fund levy or that raised by one hundred ten mills of the district's 2012 general fund levy, whichever is less;
 - d. An amount equal to that raised by the district's 2012 long-distance learning and educational technology levy;
 - e. An amount equal to that raised by the district's 2012 alternative education program levy; and
 - f. An amount equal to:
 - (1) Seventy-five percent of all revenue received by the school district and reported under code 2000 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08;
 - (2) Seventy-five percent of all mineral revenue received by the school district through direct allocation from the state treasurer and not reported under code 2000 of the North Dakota school district financial

- accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08;
- (3) Seventy-five percent of all tuition received by the school district and reported under code 1300 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility and tuition received for the provision of an adult farm management program;
 - (4) Seventy-five percent of all revenue received by the school district from payments in lieu of taxes on the distribution and transmission of electric power;
 - (5) Seventy-five percent of all revenue received by the school district from payments in lieu of taxes on electricity generated from sources other than coal;
 - (6) All revenue received by the school district from mobile home taxes;
 - (7) Seventy-five percent of all revenue received by the school district from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3);
 - (8) All telecommunications tax revenue received by the school district; and
 - (9) All revenue received by the school district from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit.
2. The superintendent shall divide the district's total baseline funding by the district's 2012-13 weighted student units ~~in order to determine the district's baseline funding per weighted student unit.~~
 3. a. In ~~2015-16~~2017-18, the superintendent shall multiply the district's weighted student units by nine thousand ~~threesix~~ sixty-fiveforty-six dollars.
 - (1) The superintendent shall adjust the product to ensure ~~that the product is at least equal to the greater of:~~
 - (a) One hundred ~~sixeight~~ percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's ~~2013-14~~ weighted student units from the previous school year; or
 - (b) One hundred percent of the district's baseline funding as established in subsection 1.
 - (2) The superintendent also shall ~~also~~ adjust the product to ensure ~~that the product does not exceed one hundred thirtyfour~~ percent of the district's baseline funding per weighted student unit multiplied by the

- district's ~~2013-14~~ weighted student units from the previous school year, as established in subsection 2.
- b. In ~~2016-17~~2018-19, the superintendent shall multiply the district's weighted student units by nine thousand six hundred forty-six dollars.
 - (1) The superintendent shall adjust the product to ensure ~~that~~ the product is at least equal to the greater of:
 - (a) One hundred eight percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's ~~2014-15~~ weighted student units from the previous school year; or
 - (b) One hundred percent of the district's baseline funding as established in subsection 1.
 - (2) The superintendent also shall ~~also~~ adjust the product to ensure ~~that~~ the product does not exceed one hundred forty percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's ~~2014-15~~ weighted student units from the previous school year.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
 - a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district, ~~provided that after 2013, except~~ the amount in dollars subtracted for purposes of this subdivision may not exceed the previous year's amount in dollars subtracted for purposes of this subdivision by more than twelve percent; and
 - b. Subtract an amount equal to seventy-five percent of all revenues listed in paragraphs 1 through 5, and 7 of subdivision f of subsection 1 and one hundred percent of all revenues listed in paragraphs 6, 8, and 9 of subdivision f of subsection 1.
 5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.

SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SERVICES PROVIDED TO SCHOOLS. During the 2017-18 interim, the legislative management shall consider studying entities that deliver kindergarten through grade twelve professional development services, distance curriculum, support for schools in achieving school improvement goals, assistance with analysis and interpretation of student achievement data, and technology support services. The study must focus on the funding, governance, nature, scope, and quality of services provided to schools. The study also must focus on the duplication of services across entities and the accountability for expenditures. The study must identify efficiencies and the desirability and feasibility of consolidating services. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 6. LEGISLATIVE INTENT - REGIONAL EDUCATION ASSOCIATIONS. It is the intent of the sixty-fifth legislative assembly that during the

2017-19 biennium regional education associations merge or partner with other regional education associations and other educational service providers, other regional education associations or other educational service providers, or both, to form the most most efficient and effective system of support for the schools in this state.

SECTION 7. LEGISLATIVE INTENT - TRANSPORTATION GRANTS. It is the intent of the sixty-fifth legislative assembly that \$55,400,000 be included in the transportation grants line item in House Bill No. 1013, as approved by the sixty-fifth legislative assembly.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 136

HOUSE BILL NO. 1253

(Representatives Sukut, Hatlestad, D. Ruby, Steiner)
(Senators Bekkedahl, Krebsbach)

AN ACT to create and enact a new section to chapter 15.1-12 of the North Dakota Century Code, relating to voluntary property transfers between school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-12 of the North Dakota Century Code is created and enacted as follows:

Voluntary transfer of property to school district - Hearing.

1. The boards of two school districts may initiate a voluntary transfer of property between the districts if each board:
 - a. Votes to pursue the transfer;
 - b. Votes to approve the proposed adjustment of the district boundaries; and
 - c. Files with the county superintendent a document evidencing compliance with this subsection.
2. Upon receiving the requisite document from the board of each school district, the county superintendent shall:
 - a. Forward a copy of the document to the county committee;
 - b. Schedule a public hearing regarding the proposed transfer of property to be held within sixty days after the date of filing; and
 - c. Give notice of the public hearing regarding the proposed transfer of property to the affected property owners by registered mail and publish notice of the public hearing in the official newspaper of the county in which the major portion of each affected school district's real property is situated, at least fourteen days before the date of the hearing.
3. At the public hearing, the county committee shall consider:
 - a. The value and amount of property held by each school district affected by the proposed transfer of property;
 - b. The amount of all outstanding bonded and indebtedness of each affected school district;
 - c. The taxable valuation of each affected school district and the taxable valuation under the proposed transfer of property;

- d. The size and boundaries of each affected school district before and after the proposed transfer of property;
 - e. The number of students enrolled in each affected school district before and after the proposed transfer of property; and
 - f. Any other relevant factors.
4. Following the public hearing, the county committee shall approve or deny the property transfer. If the property transfer is approved, the county superintendent shall forward all minutes, records, documentary evidence, and other information regarding the proceeding and the county committee's decision to the state board for final approval of the property transfer. If the property transfer is denied, the boards jointly may appeal the decision to the state board.
5. The state board shall conduct a hearing, consider testimony and documentary evidence regarding the proposed property transfer, make specific findings, and approve or deny the property transfer. If no opposition is presented at the hearing held by the county committee and the committee approves the property transfer, the state board may review the record of the county committee and give final approval to the property transfer without holding a hearing.
6. If a proposed property transfer includes property in more than one county, the county committee of the county in which the major portion of property to be transferred is located has jurisdiction over the public hearing.
7. Any property transfer approved by the county committee and the state board becomes effective on July first following the approval.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 137

SENATE BILL NO. 2324

(Senator Poolman)

AN ACT to amend and reenact section 15.1-15-01 of the North Dakota Century Code, relating to school district employee performance reviews.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-15-01. Performance reviews - Written reports.

1. a. The school district shall conduct two performance reviews of each individual employed as a teacher, a principal, or as an assistant or associate superintendent during each of the first three years an individual holds such a position. The school district shall prepare written reports of the individual's performance. The school district shall make the first yearly report available to the individual on or before December fifteenth. The school district shall make the second yearly report available to the individual on or before ~~March~~April fifteenth.
- b. If an individual begins employment as a teacher, a principal, or as an assistant or associate superintendent after January first, the school district shall conduct one review of the individual's performance. The school district shall make the written report available to the individual on or before ~~March~~April fifteenth.
2. Beginning with the fourth year of an individual's employment as a teacher, a principal, or as an assistant or associate superintendent, the school district shall conduct at least one review of the individual's performance each year. The school district shall prepare a written report of the individual's performance and make the report available to the individual on or before ~~March~~April fifteenth.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 138

HOUSE BILL NO. 1098

(Education Committee)

(At the request of the Education Standards and Practices Board)

AN ACT to create and enact a new section to chapter 15.1-18 of the North Dakota Century Code, relating to teacher requirements for prekindergarten and kindergarten; to amend and reenact subdivision a of subsection 1 of section 15.1-07-32 and section 15.1-18-02 of the North Dakota Century Code, relating to teacher requirements; to repeal sections 15.1-18-07, 15.1-18-08, and 15.1-18-09 of the North Dakota Century Code, relating to elementary, middle, and high school teacher qualifications; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 15.1-07-32 of the North Dakota Century Code is amended and reenacted as follows:

- a. Meet the ~~qualifications requirements~~ of an elementary school teacher as set forth in section ~~15.1-18-073~~ of this Act; or

SECTION 2. AMENDMENT. Section 15.1-18-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-02. Prekindergarten and kindergarten teacher ~~qualifications~~ — Exceptions ~~requirements~~.

In order to teach prekindergarten and kindergarten, an individual must be:

1. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and
2.
 - a. Have a major in elementary education and a kindergarten endorsement;
 - b. Have a major equivalency in elementary education and a kindergarten endorsement;
 - c. Have a major in elementary education and an early childhood education endorsement;
 - d. Have a major equivalency in elementary education and an early childhood education endorsement;
 - e. Have a major in early childhood education; ~~or~~
 - f. Have a major equivalency in early childhood education; or
 - g. Have a minor in early childhood education.

SECTION 3. A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

Grades one through twelve - Teacher requirements.

1. An individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board may teach any grade from one through eight, provided the individual meets any requirements established in accordance with section 15.1-18-10 and has:
 - a. A major in elementary education; or
 - b. A major equivalency in elementary education.
2. An individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board may teach any grade from five through eight, provided the individual has:
 - a. A major in middle level education; or
 - b. A major equivalency in middle level education.
3. An individual who is licensed to teach at the secondary level by the education standards and practices board or approved to teach at the secondary level by the education standards and practices board may teach any area at any grade from five through twelve, provided the individual has:
 - a. A major in the area being taught;
 - b. A major equivalency in the area being taught;
 - c. A minor in the area being taught; or
 - d. A minor equivalency in the area being taught.

SECTION 4. REPEAL. Sections 15.1-18-07, 15.1-18-08, and 15.1-18-09 of the North Dakota Century Code are repealed.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 139

HOUSE BILL NO. 1275

(Representatives K. Koppelman, Damschen, Kasper, Monson, D. Ruby, Vigesaa)
(Senator Erbele)

AN ACT to amend and reenact section 15.1-19-03.1 of the North Dakota Century Code, relating to the recitation of prayer at activities for public and nonpublic schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-19-03.1 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-03.1. Recitation of prayer - Period of silence - Pledge of allegiance.

1. A student may voluntarily pray aloud or participate in religious speech at any time before, during, or after the schoolday to the same extent a student may voluntarily speak or participate in secular speech.
2. A student of a public or nonpublic school may not be prohibited from voluntarily participating in any student-initiated prayer at an activity held on the premises of a public or nonpublic school.
3. A school board, school administrator, or teacher may not impose any restriction on the time, place, manner, or location of any student-initiated religious speech or prayer which exceeds the restriction imposed on students' secular speech.
- ~~3.4.~~ A school board may, by resolution, allow a classroom teacher to impose up to one minute of silence for meditation, reflection, or prayer at the beginning of each schoolday.
- ~~4.5.~~ A school board may authorize the voluntary recitation of the pledge of allegiance by a teacher or one or more students at the beginning of each schoolday. A student may not be required to recite the pledge of allegiance, stand during the recitation of the pledge of allegiance, or salute the American flag.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 140

SENATE BILL NO. 2091

(Education Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to amend and reenact subsection 3 of section 15.1-21-02.2, subsection 3 of section 15.1-21-02.4, and subsection 3 of section 15.1-21-02.5 of the North Dakota Century Code, relating to required science units for high school graduation and scholarships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁹ **SECTION 1. AMENDMENT.** Subsection 3 of section 15.1-21-02.2 of the North Dakota Century Code is amended and reenacted as follows:

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; consisting of:
 - a. (1) One unit of biology;
 - (2) One unit of chemistry; and
 - (3) One unit of physics; or
 - b. (1) One unit of biology;
 - (2) One unit of physical science; and
 - (3) One unit or two half units of any other science;

⁶⁰ **SECTION 2. AMENDMENT.** Subsection 3 of section 15.1-21-02.4 of the North Dakota Century Code is amended and reenacted as follows:

3. Completed three units of science, including:
 - a. ~~One unit of physical science;~~
 - b. ~~One unit of biology; and~~

⁵⁹ Section 15.1-21-02.2 was also amended by section 1 of Senate Bill No. 2185, chapter 141.

⁶⁰ Section 15.1-21-02.4 was also amended by section 2 of Senate Bill No. 2185, chapter 141.

- e. (1) ~~One unit of any other science; or~~
(2) ~~Two one-half units of any other science; consisting of:~~
- a. (1) One unit of biology;
(2) One unit of chemistry; and
(3) One unit of physics; or
- b. (1) One unit of biology;
(2) One unit of physical science; and
(3) One unit or two half units of any other science;

⁶¹ **SECTION 3. AMENDMENT.** Subsection 3 of section 15.1-21-02.5 of the North Dakota Century Code is amended and reenacted as follows:

- 3. Completed three units of science, including:
 - a. ~~One unit of physical science;~~
 - b. ~~One unit of biology; and~~
 - e. (1) ~~One unit of any other science; or~~
(2) ~~Two one-half units of any other science; consisting of:~~
 - a. (1) One unit of biology;
(2) One unit of chemistry; and
(3) One unit of physics; or
 - b. (1) One unit of biology;
(2) One unit of physical science; and
(3) One unit or two half units of any other science;

Approved March 13, 2017

Filed March 13, 2017

⁶¹ Section 15.1-21-02.5 was also amended by section 3 of Senate Bill No. 2185, chapter 141.

CHAPTER 141

SENATE BILL NO. 2185

(Senators Poolman, Meyer, Schaible)
(Representatives Owens, Streyle)

AN ACT to amend and reenact sections 15.1-21-02.2, 15.1-21-02.4, and 15.1-21-02.5 of the North Dakota Century Code, relating to high school graduation requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶² **SECTION 1. AMENDMENT.** Section 15.1-21-02.2 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-02.2. 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, which may include one unit of computer science approved by the superintendent of public instruction;
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;

⁶² Section 15.1-21-02.2 was also amended by section 1 of Senate Bill No. 2091, chapter 140.

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.

⁶³ **SECTION 2. AMENDMENT.** Section 15.1-21-02.4 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-02.4. North Dakota career and technical education scholarship.

Any resident student who graduates from a high school during or after the 2010-11 school year and any resident student who completes a program of home education supervised in accordance with chapter 15.1-23 during or after the 2012-13 school year is eligible to receive a North Dakota career and technical education scholarship provided the student:

1. Completed four units of English language arts from a sequence that includes literature, composition, and speech;
2. Completed three units of mathematics, including:
 - a. One unit of algebra II, as defined by the superintendent of public instruction; and
 - b. Two units of any other mathematics, which may include one unit of computer science;
3. Completed three units of science, 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;

⁶³ Section 15.1-21-02.4 was also amended by section 2 of Senate Bill No. 2091, chapter 140.

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- 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;
7. Completed any five additional units, two of which must be in the area of career and technical education;
8. a. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based on all high school units in which the student was enrolled; and
(2) Obtained a grade of at least "C" in each unit or one-half unit; or
b. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based only on the units required by subsections 1 through 7; and
(2) Obtained a grade of at least "C" in each unit or one-half unit; and
9. Received:
 - a. A composite score of at least twenty-four on an ACT; or
 - b. A score of at least five on each of three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.

⁶⁴ **SECTION 3. AMENDMENT.** Section 15.1-21-02.5 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-02.5. North Dakota academic scholarship.

Any resident student who graduates from a high school during or after the 2010-11 school year and any resident student who completes a program of home education supervised in accordance with chapter 15.1-23 during or after the 2012-13 school year is eligible to receive a North Dakota academic scholarship provided the student:

1. Completed four units of English language arts from a sequence that includes literature, composition, and speech;
2. Completed three units of mathematics, including:
 - a. One unit of algebra II, as defined by the superintendent of public instruction; ~~and~~
 - b. One unit of mathematics for which algebra II, as defined by the superintendent of public instruction, is a prerequisite; and
 - c. One unit of any other mathematics, which may include computer science;
3. Completed three units of science, 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 two units of:

⁶⁴ Section 15.1-21-02.5 was also amended by section 3 of Senate Bill No. 2091, chapter 140.

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- (1) The same foreign language;
 - (2) The same native American language;
 - (3) American sign language; or
 - (4) Career and technical education from a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction; and
- b. One unit selected from:
- (1) Foreign languages;
 - (2) Native American languages;
 - (3) American sign language;
 - (4) Fine arts; or
 - (5) Career and technical education;
7. Completed any five additional units;
8. a. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based on all high school units in which the student was enrolled; and
- (2) Obtained a grade of at least "C" in each unit or one-half unit; or
- b. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based only on the units required by subsections 1 through 7; and
- (2) Obtained a grade of at least "C" in each unit or one-half unit;
9. Received a composite score of at least twenty-four on an ACT; and
10. a. Fulfilled any one unit requirement set forth in subsections 1 through 7 by means of an advanced placement course and examination;
- b. Fulfilled any one unit requirement set forth in subsections 1 through 4 or 6 by completion, through an early entrance program, of a nonremedial postsecondary course offered for credit at an accredited institution of higher education which has a physical presence in this state; or
- c. Fulfilled any one-half unit requirement set forth in subsections 1 through 7 by means of a dual-credit course.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 142

HOUSE BILL NO. 1283

(Representatives B. Koppelman, Louser, Marschall, Owens, Rohr, Schreiber-Beck)
(Senators Burckhard, Meyer, Schaible)

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:

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. 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, and maintains progress toward degree completion.
- b. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction either a North Dakota academic scholarship or a North Dakota career and technical education scholarship in the amount of five hundred dollars for each quarter during which the student is enrolled full time at an accredited institution of higher education in this state and, maintains a cumulative grade point average of 2.75, and maintains progress toward degree completion.
2. The state board shall monitor each scholarship recipient to ensure that the student meets the academic and other requirements of this section. Upon determining that a recipient student has failed to meet the requirements of this section, the board shall provide notification to the student within ten days.
3. A student is not entitled to receive more than six thousand dollars under this section.
4. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
5. a. (1) This section does not require a student to be enrolled in consecutive semesters.
(2) This section does not require a student to be enrolled in consecutive quarters.

- b. A scholarship under this section is valid only for six academic years after the student's graduation from high school and may be applied to a graduate program.
6. A scholarship under this section is available to any eligible resident student who fulfills the requirements of section 15.1-21-02.4 or 15.1-21-02.5 and who:
- Graduates from a high school in this state;
 - Graduates from a high school in a bordering state under chapter 15.1-29;
 - Graduates from a nonpublic high school in a bordering state while residing with a custodial parent in this state; or
 - Completes a program of home education supervised in accordance with chapter 15.1-23.
7. a. For purposes of North Dakota scholarship eligibility under this section, ~~"full-time" 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.~~
- (1) ~~If a student requires fewer than fifteen credits to graduate, the student may retain scholarship eligibility by enrolling in fewer than fifteen but at least twelve credits during the semester, or the equivalent number of credits, as determined by the state board of higher education, with respect to students in a quarter system.~~
 - (2) ~~Students who graduated from high school during the 2009-10 or the 2010-11 school year and who have completed six semesters may retain scholarship eligibility by enrolling in only twelve credits during each of the student's final two semesters, or the equivalent number of credits, as determined by the state board of higher education, with respect to students in a quarter system.~~
 - (3) ~~The requirement that a student be enrolled in at least fifteen credits, as set forth in subdivision a, does not apply in the case of a student participating in a clinical, practicum, internship, cooperative program, or similar external experience, provided:~~
 - ~~The external experience is equivalent to at least six credits, or such similar amount as determined by the state board of higher education, with respect to students in a quarter system; and~~
 - ~~The credits for the external experience, together with any other credits in which the student is enrolled, total at least twelve has the same meaning as the term is defined by the institution the student is attending.~~
- b. For the purpose of North Dakota scholarship eligibility under this section, "progress toward degree completion" means earning the following minimum number of credits after each semester or quarter term disbursement to qualify for the subsequent disbursement:

- (1) Twenty-four credits after disbursement two;
- (2) Thirty-nine credits after disbursement three;
- (3) Fifty-four credits after disbursement four;
- (4) Sixty-nine credits after disbursement five;
- (5) Eighty-four credits after disbursement six; and
- (6) Ninety-nine credits after disbursement seven.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 143

HOUSE BILL NO. 1037

(Legislative Management)
(Higher Education Committee)

AN ACT to create and enact section 15.1-21-02.9 of the North Dakota Century Code, relating to North Dakota scholarship information; and to amend and reenact subsection 1 of section 15.1-06-06 and section 15.1-07-33 of the North Dakota Century Code, relating to the approval of public schools and the student information system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~In order to~~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;
 - 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 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; and
- g. The school uses North Dakota eTranscripts, or an alternative information system designated by the information technology department in collaboration with the superintendent of public instruction, to generate official transcripts.

SECTION 2. AMENDMENT. Section 15.1-07-33 of the North Dakota Century Code is amended and reenacted as follows:

15.1-07-33. Student information system - Exemption.

1. Notwithstanding any other technology requirements imposed by the superintendent of public instruction, the information technology department, or the North Dakota educational technology council, each school district shall acquire PowerSchool through the information technology department and use it as its principal student information system. Each school district shall use a state course code, assigned by the department of public instruction, to identify all local classes in PowerSchool.
2. 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. Section 15.1-21-02.9 of the North Dakota Century Code is created and enacted as follows:

15.1-21-02.9. North Dakota scholarship – Information system.

Each school district shall use North Dakota eTranscripts, or an alternative information system designated by the information technology department in collaboration with the department of public instruction, to submit official transcripts for the North Dakota academic or career and technical education scholarship to the superintendent of public instruction.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 144

HOUSE BILL NO. 1052

(Education Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to amend and reenact section 15.1-21-08 of the North Dakota Century Code, relating to the administration of a state assessment in reading and mathematics.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-21-08 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-08. Reading, 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 annually to all public school students in grades three, four, five, six, seven, eight, and in at least one grade level selected from nine through ~~eleven~~twelve.
2. 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 at least one grade level selected from ten and ~~eleven~~through twelve.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 145

HOUSE BILL NO. 1389

(Representatives B. Koppelman, Rick C. Becker, Louser, Olson, Owens, Rohr, D. Ruby, Toman)
(Senators Burckhard, Kannianen, Kreun, O. Larsen)

AN ACT to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives.

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:

Parental directive - Administration of tests and assessments - Report.

1. A student's parent may direct the school district in which the student is enrolled not to administer to the student any state test or state assessment required in accordance with section 15.1-21-08.
2. In addition to the authority granted under subsection 1, a student's parent may direct that the school district in which the student is enrolled not administer any other specific test or assessment to the student, except a parental directive under this subsection does not apply to:
 - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
 - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
 - c. The ACT; or
 - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.

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5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.
 6. Each school district shall post the parental directive form on its website and make the form available to a parent, upon request.
 7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:
 - a. The number of parental directives received;
 - b. The number of parental directives applicable to students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency; and
 - c. Any loss of funding stemming from the parental directives.

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 146

HOUSE BILL NO. 1051

(Education Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to repeal section 15.1-21-15 of the North Dakota Century Code, relating to the electronic course delivery approval process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 15.1-21-15 of the North Dakota Century Code is repealed.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 147

HOUSE BILL NO. 1428

(Representatives Olson, Brabandt, Devlin, Ertelt, Johnston, Oliver, Schatz, Toman)
(Senators Erbele, Kannianen, G. Lee)

AN ACT to amend and reenact subsection 2 of section 15.1-23-09 of the North Dakota Century Code, relating to home education standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15.1-23-09 of the North Dakota Century Code is amended and reenacted as follows:

2. a. The requirement of subsection 1 does not apply if the parent notifies the school district in which the child resides that the parent has a philosophical, moral, or religious objection to the use of standardized achievement tests ~~and~~or 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; or
 - (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 an examination.
- b. The parent shall file the notification and necessary documentation required by this subsection with the school district at the same time that the parent files the statement of intent to supervise home education required by section 15.1-23-02.

Approved April 3, 2017

Filed April 3, 2017

CHAPTER 148

SENATE BILL NO. 2321

(Senators Wanzek, Rust, Oban)
(Representatives Headland, Pollert, Sanford)

AN ACT to amend and reenact section 15.1-27-35.3 of the North Dakota Century Code, relating to payments to school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-27-35.3 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-35.3. Payments to school districts - Unobligated general fund balance.

1. a. 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 percent of its actual expenditures, plus twenty thousand dollars.
 - b. ~~Beginning~~Except as provided in subdivision c, beginning July 1, 2017, the superintendent of public instruction shall determine the amount of payments due to 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 thirty-five percent of its actual expenditures, plus ~~twenty~~fifty thousand dollars.
 - c. Beginning July 1, 2017, the superintendent of public instruction shall determine the amount of payments due to 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 thirty-five percent of its actual expenditures, plus one hundred thousand dollars if the school district is in a cooperative agreement with another school district to share academic resources, and the school districts are considering reorganization under chapter 15.1-12. An eligible school district may receive payments under this provision for a maximum of two years.
2. For purposes of this section, a district's unobligated general fund balance includes all moneys in the district's miscellaneous fund, as established under section 57-15-14.2.

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 149

HOUSE BILL NO. 1254

(Representatives Sukut, Hatlestad, D. Ruby, Steiner)
(Senators Bekkedahl, Krebsbach)

AN ACT to amend and reenact sections 15.1-29-05, 15.1-29-06, and 15.1-29-07 of the North Dakota Century Code, relating to a school district tuition waiver contract.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-29-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-05. ~~Payment of tuition--~~ Petition by parent for payment of tuition or tuition waiver.

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1. If a student wishes to attend a school district other than the student's district of residence, the student's parent may file a written petition with the board of the student's school district of residence for the payment of requesting that the board either:
 - a. Pay the tuition required by this chapter in order that the student can attend another school district; or
 - b. Sign a tuition waiver contract with another district that has agreed to admit the student.
2. Within ~~sixty~~thirty days after receiving the petition, the board of the student's school district of residence shall meet with the student's parent and render a decision regarding the payment of tuition. The board may:
 - a. Agree to pay the tuition;
 - b. Agree to sign a tuition waiver contract with the admitting district; or
 - c. Refuse to pay the tuition or sign a tuition waiver contract.
3. If the board of the student's school district of residence does not render a contrary decision within the ~~sixty-day~~thirty-day period, the petition is deemed approved and the board becomes obligated to pay tuition to the admitting district. If the petition is approved, the board shall pay the tuition charges.
4. If the petition is denied, the student's parent may file an appeal with the county superintendent of schools.

SECTION 2. AMENDMENT. Section 15.1-29-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-06. ~~Payment~~Petition for waiver of tuition for grades one through twelve - Appeal - Withholding of state payments.

1. a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05, the county superintendent of schools shall convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. The committee shall consult with the boards of the affected districts and with the student's parent. The committee shall schedule a hearing, giving due notice to each affected board and to the student's parent. The committee shall conduct the hearing in a manner that allows all parties to present arguments and responses. The committee shall base its decision regarding the ~~payment of tuition~~petition on the grade in which the student is or will be enrolled.
 - b. (1) If the student is or during the following school year will be enrolled in any grade from nine through twelve and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, or extreme hardship for the student or the student's family, the committee shall approve the ~~application and the payment of tuition by the student's school district of residence, thereby obligating the district of residence~~petition and direct the board of the student's school district of residence to pay the tuition or sign a tuition waiver contract.

(2) The committee's directive regarding the payment of tuition or the duration of the tuition waiver contract may be for any fixed number of school years, up to the completion of the student's high school education, unless open enrollment is an available option. ~~The decision of the committee may be appealed to the state board of public school education. A decision by the state board is final.~~
 - c. (1) If the student is or during the following school year will be enrolled in any grade from kindergarten through eight and the committee finds ~~that the attendance of the student is necessitated by shorter distances or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's district of residence, thereby obligating the district of residence~~petition and direct the board of the student's school district of residence to pay the tuition or sign a tuition waiver contract.

(2) The committee's directive regarding the payment of tuition or the duration of the tuition waiver contract is limited to one school year. The student's parent may make subsequent applications for the payment of tuition or the signing of a tuition waiver contract.
 - d. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.
2. If a student's school district of residence consists of land situated in more than one county, the three-member committee established under subsection 1 must consist of the county superintendent of schools and the state's attorney from the county in which the greatest portion of the school district's land is situated, and an individual appointed for a term of three years by the board of

county commissioners representing the county in which the greatest portion of the school district's land is situated.

3. If the student's school district of residence does not ~~comply with the decision requiring that tuition charges be paid~~ pay the tuition or sign the tuition waiver contract, as required by this section, the board of the admitting district shall notify the superintendent of public instruction. Upon ~~verifying that tuition payments are due the admitting district and are unpaid~~ verification, the superintendent of public instruction shall withhold all state payments to the student's school district of residence until ~~any tuition due has been fully paid~~ the requisite action has been taken.
4. A school district of residence may provide transportation to a student for whom tuition is paid under this section or for whom the payment of tuition is contractually waived. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district.

SECTION 3. AMENDMENT. Section 15.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-07. Payment of tuition by parent - Content of tuition contract with parent.

1. If the board of a student's school district of residence refuses to pay the tuition or sign a tuition waiver contract in order for the student to attend school in another district and if the committee established under section 15.1-29-06 denies the petition on appeal, the student's parent may pay the tuition.
2. If the parent chooses to pay the tuition, the parent shall:
 - a. Submit at least fifty percent of the total amount due on the day of enrollment; and
 - b. Provide the board of the admitting district with a written contract agreeing to pay any remaining balance on or before December thirty-first.

Approved March 30, 2017

Filed March 30, 2017

CHAPTER 150

SENATE BILL NO. 2307

(Senators Rust, Schaible, Vedaa)
(Representatives D. Johnson, Longmuir, Holman)

AN ACT to amend and reenact subdivision a of subsection 1 of section 15.1-29-14 of the North Dakota Century Code, relating to student placement for noneducational purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 15.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

- 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 in foster homecare~~ 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 in foster homecare~~ 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 in foster homecare~~ 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.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 151

SENATE BILL NO. 2250

(Senators Poolman, Campbell, Heckaman)
(Representatives Schreiber-Beck, Delmore)

AN ACT to amend and reenact section 15.1-37-06 of the North Dakota Century Code, relating to early childhood education programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-37-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-37-06. Receipt and distribution of grants - Notification.

1. a. The department of commerce shall receive applications for and distribute grants under this section to eligible members, including governing board members, of a consortium formed in accordance with section 15.1-37-05, in the amount of two thousand dollars for each child enrolled in a program of early childhood education, if the child is eligible for free lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751, et seq.], and one thousand dollars for each child enrolled in a program of early childhood education, if the child is eligible for reduced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751, et seq.], provided:
 - a- (1) The child is a resident of this state; ~~and~~
 - b- (2) The child has reached four years of age before August first in the year of enrollment; and
 - (3) The program has a duration of at least four hundred hours over a period of at least thirty-two consecutive weeks.
 - b. A child enrolled in a federally funded head start program may not be counted for the purpose of determining grant eligibility under this section.
2.
 - a. Once each calendar quarter, at the time and in the manner required by the department of commerce, any provider receiving a grant under this section shall forward to the parent of each child receiving services a notice indicating the total amount of the grant that was awarded to the provider for the quarter, the pro rata amount attributable to the parent's child, and the source of the grant. The department of commerce shall standardize the notification required by this subdivision.
 - b. If a provider fails to meet the notification requirements of this subsection, the department of commerce shall reduce the amount of the provider's next grant payment by fifty percent. If a provider fails to meet the notification requirements of this section a second time, the department of commerce shall determine that the provider is ineligible to participate in the grant program for a period of one year.

Approved April 10, 2017

Filed April 10, 2017

ELECTIONS

CHAPTER 152

HOUSE BILL NO. 1369

(Representatives Carlson, Rick C. Becker, Boehning, Kasper, K. Koppelman, Louser,
D. Ruby)
(Senators Casper, Laffen, Poolman, Unruh, Wardner)

AN ACT to create and enact sections 16.1-01-04.1 and 16.1-01-04.2, a new subsection to section 39-06-03.1, and a new subsection to section 39-06-14 of the North Dakota Century Code, relating to identification and residency requirements for electors and identification cards; to amend and reenact sections 16.1-01-04, 16.1-01-12, 16.1-02-09, 16.1-05-07, 16.1-07-06, 16.1-15-08, 16.1-15-19, and 39-06-07.1 of the North Dakota Century Code, relating to qualifications of electors, responsibilities of election officials before issuing ballots, elector identification requirements, identification cards, and operator's licenses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-04. Qualifications of electors - Voting requirements.

1. ~~Every~~To qualify as an elector of this state, an individual must be:
 - a. ~~A~~ A citizen of the United States ~~who is eighteen;~~
 - b. Eighteen years or older; ~~and~~
 - c. ~~A~~ A resident of this state; ~~and who~~ who has resided in the precinct at least thirty days ~~next~~immediately preceding any election; ~~except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.~~
2. ~~For the purposes of this title, every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode.~~
3. ~~Except as otherwise provided in this section, an individual's residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.~~
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by individuals convicted and sentenced for a felony must be limited according to chapter 12.1-33.
5. ~~For the purposes of this title, an individual may not be deemed to have gained or lost a residence solely by reason of the individual's presence or absence~~

~~while enrolled as a student at a college, university, or other postsecondary institution of learning in this state.~~

- ~~6. For the purposes of this title, a member of the armed forces of the United States may not be deemed to have gained or lost a residence in this state solely by reason of the member being stationed on duty in this state.~~
- ~~7. For the purposes of this title, an individual may not be deemed to have lost residence in the individual's precinct or in the state by reason of the individual engaging in temporary government service or private employment outside the individual's precinct or outside the state.~~
- ~~8.3. For purposes of this title, a~~ qualified elector may not authorize an attorney in fact, guardian, or other individual to apply for any ballot or to vote in any election on behalf of or in the place of the qualified elector.
- ~~9.4. For purposes of this title, an~~ elector seeking to vote in an election must meet the identification requirements specified in ~~sections 16.1-05-07 and 16.1-07-06~~section 16.1-01-04.1.

SECTION 2. Section 16.1-01-04.1 of the North Dakota Century Code is created and enacted as follows:

16.1-01-04.1. Identification verifying eligibility as an elector.

1. A qualified elector shall provide a valid form of identification to the proper election official before receiving a ballot for voting.
2. The identification must provide the following information regarding the elector:
 - a. Legal name;
 - b. Current residential street address in North Dakota; and
 - c. Date of birth.
3. a. A valid form of identification is:
 - (1) A driver's license or nondriver's identification card issued by the North Dakota department of transportation; or
 - (2) An official form of identification issued by a tribal government to a tribal member residing in this state.
- b. If an individual's valid form of identification does not include all the information required under subsection 2 or the information on the identification is not current, the identification must be supplemented by presenting any of the following issued to the individual which provides the missing or outdated information:
 - (1) A current utility bill;
 - (2) A current bank statement;
 - (3) A check issued by a federal, state, or local government;

- (4) A paycheck; or
- (5) A document issued by a federal, state, or local government.
4. The following forms of identification are valid for the specified individuals living under special circumstances who do not possess a valid form of identification under subsection 3.
- a. For an individual living in a long-term care facility, a long-term care certificate prescribed by the secretary of state and issued by a long-term care facility in this state;
- b. For a uniformed service member or immediate family member temporarily stationed away from the individual's residence in this state, or a resident of the state temporarily living outside the country, a current military identification card or passport; and
- c. For an individual living with a disability that prevents the individual from traveling away from the individual's home, the signature on an absentee or mail ballot application from another qualified elector who, by signing, certifies the applicant is a qualified elector.
5. If an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct in which the individual desires to vote, the individual may mark a ballot that must be securely set aside in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show a valid form of identification to either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the sixth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.
6. The secretary of state shall develop uniform procedures for the requirements of subsection 5 which must be followed by the election official responsible for the administration of the election.

SECTION 3. Section 16.1-01-04.2 of the North Dakota Century Code is created and enacted as follows:

16.1-01-04.2. Residence for voting - Rules for determining.

For purposes of voting:

1. Every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes.
2. The street address verified by the individual as provided in section 16.1-01-04.1 when requesting a ballot to vote must be the address of residence for the individual.
3. An individual retains a residence in this state until another has been gained.

4. The acts of residing at a new address for thirty days and verifying that address as provided under section 16.1-01-04.1 constitute a change in the individual's voting residence.

SECTION 4. AMENDMENT. Section 16.1-01-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-12. Election offenses - Penalty.

1. It is unlawful for an individual, measure committee as described in section 16.1-08.1-01, or other organization to:
 - a. Fraudulently alter another individual's ballot or substitute one ballot for another or to otherwise defraud a voter of that voter's vote.
 - b. Obstruct a qualified elector on the way to a polling place.
 - c. Vote ~~or offer to vote~~ more than once in any election.
 - d. Knowingly vote in the wrong election precinct or district.
 - e. Disobey the lawful command of an election officer as defined in chapter 16.1-05.
 - f. Knowingly exclude a qualified elector from voting or knowingly allow an unqualified person to vote.
 - g. Knowingly vote when not qualified to do so.
 - h. Sign an initiative, referendum, recall, or any other election petition when not qualified to do so.
 - i. Circulate an initiative, referendum, recall, or any other election petition not in its entirety or circulate such a petition when unqualified to do so.
 - j. Pay or offer to pay any individual, measure committee, or other organization, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file their intent to remunerate prior to submitting the petitions and, in the case of initiative and referendum petitions, fully disclose all contributions received pursuant to chapter 16.1-08.1 to the secretary of state upon submission of the petitions. The disclosure of contributions received under this section does not affect the requirement to file a pre-election report by individuals or organizations soliciting or accepting contributions for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly under chapter 16.1-08.1. Any signature obtained in violation of this subdivision is void and may not be counted.
 - k. Willfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title.

- l. Willfully violate any rule adopted by the secretary of state pursuant to this title.
 - m. Willfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the same to be false, or willfully deface, destroy, or conceal any statement or certificate entrusted to the individual's or organization's care.
 - n. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law.
 - o. Sign a name other than that individual's own name to an initiative, referendum, recall, or any other election petition.
2. a. A violation of subdivisions ab, e, f, or h through l of subsection 1 is a class A misdemeanor.
 - b. A violation of ~~subdivisions~~subdivisions a, c, d, g, or m of subsection 1 is a class C felony.
 - c. A violation of subdivision n of subsection 1 occurring after an election but before the final canvass, or during an election, is a class C felony, and in other cases is a class A misdemeanor.
 - d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition.
 - e. An organization, as defined in section 12.1-03-04, that violates this section is subject to the organizational fines in section 12.1-32-01.1. The court in which the conviction is entered shall notify the secretary of state of the conviction and shall order the secretary of state to revoke the certificate of authority of any convicted organization or limited liability company. The organization may not reapply to the secretary of state for authorization to do business under any name for one year upon conviction of a class A misdemeanor and for five years upon conviction of a class C felony under this section.
 - f. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01.
3. Every act which by this chapter is made criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to qualified electors to be decided by votes cast at an election.

SECTION 5. 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.~~

4. 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 "active" The report must include the individual's:~~
 1. Complete legal name, including both previous and current names if changed;
 2. Complete residential address, including both previous and current residential addresses if changed;
 3. Complete mailing address, including both previous and current mailing addresses if changed;
 4. Driver's license or nondriver identification number, including both previous and current numbers if changed; and
 5. Citizenship status, including both previous and current citizenship status if changed.

⁶⁵ **SECTION 6. AMENDMENT.** Section 16.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-07. Poll clerks to check identification and verify eligibility - Poll clerks to request, correct, and update incorrect information contained in the pollbook.

1. ~~Before delivering a ballot to an individual according to section 16.1-13-22 in any election, the poll clerks shall require the individual to show identification, which includes the individual's residential address and date of birth. The valid forms of identification are:~~
 - a. ~~A current driver's license or nondriver identification card issued by the department of transportation;~~
 - b. ~~An official form of identification issued by a tribal government;~~
 - c. ~~A long term care certificate prescribed by the secretary of state, if the individual does not possess an official form of identification provided for under subdivision a or b; or~~
 - d. ~~For a uniformed service member or a qualifying family member temporarily stationed away from the individual's residence in the state or a qualified elector temporarily living outside the country, a current military identification card or passport if the individual does not possess an official~~

⁶⁵ Section 16.1-05-07 was also amended by section 7 of House Bill No. 1363, chapter 154.

~~form of identification provided for under subdivision a or~~ ba valid form of identification with the information required under section 16.1-01-04.1.

2. a. When verifying an individual's eligibility or when entering the name of an individual into the pollbook, poll clerks shall request, correct, and update any incorrect or incomplete information about an individual required to be included in the pollbook generated from the central voter file.
- b. If the individual's name is contained in the pollbook generated from the central voter file, the poll clerks shall verify the individual's residential address and mailing address, ~~if different from the individual's residential address.~~
- c. If the individual's name is not contained in the pollbook generated from the central voter file but the individual is determined eligible to vote, the poll clerks shall record the individual's name in the pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook and the central voter file.
3. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct or who does not meet the thirty-day residency requirement to the proper precinct and ~~voting location~~ polling place.

SECTION 7. AMENDMENT. Section 16.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-06. Application form.

1. Application for an absent voter's or mail ballot must be made on a form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school district in which the applicant is an elector, on any form, approved by the secretary of state, or any blank containing the following:
 - a. The applicant's name.
 - b. The applicant's current or most recent North Dakota residential address.
 - c. The applicant's mailing address.
 - d. The applicant's current contact telephone number, if available.
 - e. The election for which the ballot is being requested.
 - f. The date of the request.
 - g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election and will be a qualified elector of the precinct.
 - h. The applicant's signature.
 - i. ~~A space for the voter to indicate the voter's~~ The designation of the individual's status as a citizen of this country and resident of this state living outside the United States, a uniformed service member living away from the voter's individual's North Dakota residence, or an immediate

family member of the uniformed service member living away from the voter's ~~individual's~~ North Dakota residence.

- j. ~~The applicant's birth date and year~~ date of birth.
- k. ~~As provided in subsection 1 of section 16.1-05-07, the~~ The identification number from one of the applicant's valid forms of identification or, a copy of the applicant's long-term care certificate, and, if necessary, a copy of the applicant's supplemental identification under section 16.1-01-04.1.
2. If the applicant is unable to sign the applicant's name to the application, the applicant shall mark (X) or use the applicant's signature stamp on the application 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. If the applicant does not possess or cannot secure an approved form of identification as provided for under ~~subsection 1 of section 16.1-05-07~~ section 16.1-01-04.1 due to a disability with which the individual lives and which prevents the individual from traveling to obtain, the application also must be signed by another qualified elector who, by signing, certifies that the applicant is a qualified elector. The secretary of state shall prescribe the form of the certification required under this subsection. An individual may not certify the qualifications of more than four applicants in an election.
4. ~~The application for a qualified elector serving on active duty as a uniformed service member or an immediate family member who is a qualified elector and stationed at a location other than that individual's voting residential address temporarily stationed away from the individual's residence in this state, or a resident of the state temporarily living outside the country must include the following additional information if the voter desires to vote by facsimile or electronic mail~~ individual desires to access the ballot by electronic means:
 - a. Facsimile telephone number; or
 - b. Electronic mail address.
5. ~~The application for a qualified elector living outside the United States must include a facsimile telephone number or electronic mail address if the voter desires to vote by facsimile or electronic mail~~ An incomplete application must be returned to the applicant for completion and resubmission.
6. Except for the applicant's date of birth ~~and motor vehicle driver's license or nondriver~~, identification card number, and any supplemental documentation provided under section 16.1-01-04.1, the application is an open record under section 44-04-18.

SECTION 8. 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 - Ballots set aside to election official administering the election.

1. After generating the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the election board shall cause the ballots containing lawful write-in votes cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar manner. The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together. Ballots that are void must be secured in a separate wrapper and must be marked "void". Ballots that are spoiled must be separately secured and marked "spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each wrapper must be endorsed with the names or numbers of the precincts and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the county auditor so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned in person to the county recorder. At the meeting of the county canvassing board, the county recorder shall deliver the ballots containing lawful write-in votes from all the precincts within the county if these votes were not canvassed by the polling place election board on election night according to section 16.1-12-02.2. At the meeting of the county canvassing board, the county recorder shall deliver each ballot that may contain a write-in vote referenced in a demand made under subsection 1 of section 16.1-12-02.2. Ballots used with any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section.
2. Each ballot within a sealed envelope set aside for an individual who was unable to provide a valid form of identification when appearing to vote in the election must be delivered to the election official responsible for the administration of the election so the envelope containing the ballot is available if the individual for whom the ballot was set aside appears in the official's office to verify the individual's eligibility as an elector. The verified and unverified ballots set aside must be delivered to the members of the canvassing board for proper inclusion or exclusion from the canvass of votes.

SECTION 9. AMENDMENT. Section 16.1-15-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-19. County canvassing board to disregard technicalities, misspelling, and abbreviations - Ballots set aside - Write-in votes canvassed - Votes from unestablished precincts disregarded.

In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office if it can be ascertained for whom the vote was intended. Pursuant to Under section 16.1-01-04.1, the board shall include in the canvass the votes from any ballot set aside and subsequently verified by the individual who marked the ballot, and review each envelope containing an unverified ballot forwarded to the board from the polling place election officials. The envelopes for all ballots set aside along with the envelopes containing uncounted ballots from unverified individuals must be kept with all other election materials for the required retention period under section 16.1-15-13. Under section 16.1-12-02.2, the board shall canvass all qualifying write-in votes. The board may not count votes polled in

any place except at established precincts. The county canvassing board is authorized to initial all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted by election boards and to make a final determination of eligibility for all ballots which were rejected at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12.

⁶⁶ **SECTION 10.** A new subsection to section 39-06-03.1 of the North Dakota Century Code is created and enacted as follows:

The director shall issue a nondriver color photo identification card to any resident who at the time of application is not a citizen of the United States and who fulfills the requirements of this section. The identification card must be designed in a manner to clearly make the card distinguishable from a similar card issued to a citizen of the United States and resident of this state. The card may be replaced with a card issued to a citizen of this country and resident of this state only when proof of United States citizenship is provided by the individual and any applicable replacement fee listed in section 39-06-49 is paid.

⁶⁷ **SECTION 11. AMENDMENT.** Section 39-06-07.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-07.1. Proof of name, date of birth, and legal presence, and citizenship for operator's license application - License difference for citizens and noncitizens.

An applicant must verify the applicant's name, date of birth, and legal presence on any application by a certified birth certificate or any other documentary evidence that confirms to the satisfaction of the director the true identity, date of birth, and legal presence, and citizenship of the applicant. The license issued to a noncitizen of the United States must be designed in a manner to distinguish the license clearly from a similar license issued to a citizen of the United States.

SECTION 12. A new subsection to section 39-06-14 of the North Dakota Century Code is created and enacted as follows:

The director shall issue an operator's license to any resident who at the time of application is not a citizen of the United States and who fulfills the requirements of this section. The license must be designed in a manner to distinguish the license clearly from a similar license issued to a citizen of the United States and resident of this state. The license issued under this subsection may be replaced with a card issued to a citizen of this country and resident of this state only when proof of United States citizenship is provided by the individual and the replacement fee listed in section 39-06-49 is paid.

Approved April 24, 2017

Filed April 25, 2017

⁶⁶ Section 39-06-03.1 was also amended by section 3 of House Bill No. 1128, chapter 256.

⁶⁷ Section 39-06-07.1 was also amended by section 4 of House Bill No. 1128, chapter 256.

CHAPTER 153

SENATE BILL NO. 2261

(Senators Myrdal, Clemens, Vedaa)
(Representatives Kasper, B. Koppelman, K. Koppelman)

AN ACT to amend and reenact sections 16.1-03-01, 16.1-03-02, 16.1-03-03, and 16.1-03-07 of the North Dakota Century Code, relating to the organization of political parties and caucuses within legislative districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-01. Precinct Party caucus to elect precinct committeemen - Time and manner of holding - Caucus call - Notice.

1. Each legislative district party shall organize in conformance with the state legislative district boundaries as established by the legislative assembly and as set forth under chapter 54-03.
2. On or before May fifteenth following the last preceding general election, a party caucus must be held by every election precinct legislative district party at a site within or reasonably close to the precinct in the manner provided in sections 16.1-03-01 through 16.1-03-03. The legislative district party may organize the caucus by precinct or on an at-large basis for the entire district.
3. The legislative district chairman of each party shall set the date and time for the precinct party caucus. If there is not a duly elected district chairman in a legislative district, the state party executive committee may issue the call for the precinct caucus. The call must contain the following:
 - a. Name of party.
 - b. Legislative district ~~and precinct~~ number ~~or name~~.
 - c. Date of caucus.
 - d. Place of caucus.
 - e. Hours of caucus.
 - f. A statement of the business to be conducted, ~~including the election of precinct committeemen and such other individuals as may be provided by state law and district party bylaws.~~
 - g. The name of the district chairman or, if there is not a duly elected district chairman, the member of the state party executive committee issuing the call.

4. The district chairman or, if there is not a duly elected district chairman, the state party executive committee shall provide ten days' published notice in the official newspaper in circulation within each precinct in the district. The notices must contain that information set forth in subsection 3. ~~The information required by this section for all precincts in the district may be included in one notice for publishing purposes.~~

SECTION 2. AMENDMENT. Section 16.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-02. Who may participate in and vote at caucus.

1. Only those individuals who are qualified electors under section 16.1-01-04 may vote or be elected as ~~committeemen or~~ officers at the precinct party caucus.
2. In case the right of an individual to participate at the caucus is challenged, the question of the individual's right to participate must be decided by a vote of the whole caucus. An individual so challenged may not vote on the question of the individual's right to participate in the caucus, and a two-thirds vote of the whole caucus is required to exclude an individual from participation.
3. An individual may not vote or participate at more than one ~~precinct~~ caucus in any one year.

SECTION 3. AMENDMENT. Section 16.1-03-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-03. Political parties ~~entitled to~~ may elect committeemen.

1. ~~A political organization is entitled to elect a precinct committeeman at its precinct caucus if:~~
 - a. ~~The organization nominated and had printed on the ballot at the last preceding general election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor, attorney general, or secretary of state; and~~
 - b. ~~The candidates provided for in subdivision a received at least five percent of the total vote cast for presidential electors or for governor, attorney general, or secretary of state within this state at that election.~~
2. ~~Each~~ If a political party chooses to organize by precinct, the party in each voting precinct of this state, ~~otherwise qualifying under subsection 1,~~ is entitled to elect one precinct committeeman for each two hundred fifty votes, or majority of a fraction thereof, cast for the party's presidential electors, governor, attorney general, or secretary of state in the precinct in the last general election. ~~Each precinct is entitled to at least one precinct committeeman for each party which qualifies under subsection 1. Each precinct committeeman must be an elector of the precinct in which the committeeman resides and must be elected for a two-year term.~~
3. ~~If a political organization desires to organize under this chapter but has not qualified as provided in subsection 1, the organization may elect one precinct committeeman for each precinct in the district.~~

SECTION 4. AMENDMENT. Section 16.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-07. Meeting of district committee - Organization.

1. ~~If a legislative district chooses to organize by precinct in every odd-numbered year, the district committee of each party shall meet within fifteen days after the precinct caucus provided for in section 16.1-03-01. The day, hour, and site must be set by the existing district committee chairman. Any incumbent members of the legislative assembly from the party, the precinct committeemen of a party, selected as provided by this chapter, and any other individual provided for by the district committee's bylaws constitute the district committee of the party. The district committee of a party must be organized to coincide with the geographical boundary lines of state legislative districts. Each member of any committee provided for in this chapter must be a qualified elector.~~
2. ~~The precinct committeemen and the party's incumbent members of the legislative assembly from the district shall select the officers of the district committee. The officers selected, as provided by the district party bylaws, need not be precinct committeemen; however, all the officers must be voting members of the district committee. The district committee shall select the officers of the district committee and forward to the state committee the name and contact information of the district committee chairman. The district committee may appoint an executive committee consistent with the bylaws of the district committee. That party's nominees for and members of the legislative assembly shall serve as members of the executive committee.~~
3. If the office of chairman becomes vacant, the vacancy may be filled as provided by the district party bylaws.
4. The bylaws of the state committee or state party may not include any requirement providing directives or procedures for the method of the organization of district committees nor may the state committee or state party take any action or impose any requirement regarding district party organization which is not consistent unless a district lacks a district committee that is able to carry out the responsibilities under this chapter. A state party may not take any action that is inconsistent with this chapter.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 154

HOUSE BILL NO. 1363

(Representatives Dockter, Steiner)

AN ACT to create and enact subsection 3 of section 16.1-04-01 of the North Dakota Century Code, relating to election precincts; to amend and reenact section 1-08-09, subsections 2 and 5 of section 16.1-01-01, sections 16.1-04-02 and 16.1-05-01, subsection 3 of 16.1-05-07, section 16.1-05-08, subsection 2 of 16.1-06-16, and sections 16.1-07-15, 16.1-10-06, 16.1-11-20, 40-02-10, 44-02-05, 44-02-07, and 44-02-08 of the North Dakota Century Code, relating to election polling places and filling vacancies in elective offices; to repeal section 16.1-04-03 of the North Dakota Century Code, relating to election administration; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1-08-09. Service of civil process within boundary of an open polling location place.

During any primary, general, or special election held in this state, or in any district, county, city, or precinct, civil process may not be served on any person entitled to vote at the election within one hundred feet [30.48 meters] from the outermost entrance leading into the building or facility in which a polling place is located and open for voting.

SECTION 2. AMENDMENT. Subsection 2 of section 16.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~places~~, 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.

SECTION 3. AMENDMENT. Subsection 5 of section 16.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- 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. Provide completed reports on election matters as required by the secretary of state.
 - f. Attend, or send a designee to attend, state election conferences convened by the secretary of state.
 - g. Comply with the form of the ballot as prescribed by state law and the secretary of state.
 - h. Comply with the standards for voting precincts and polling locations, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including ballots, pollbooks, and reports as established by the secretary of state.
 - i. Assist with investigations initiated by the secretary of state under this section.
 - j. 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. A knowing violation of this subsection is an offense under section 12.1-11-06.

SECTION 4. Subsection 3 to section 16.1-04-01 of the North Dakota Century Code is created and enacted as follows:

3. The precincts may not be established later than December thirty-first of the year immediately preceding an election cycle and not later than seventy days before a special election.

SECTION 5. AMENDMENT. Section 16.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-04-02. ~~Voting~~ Polling places - Duties and responsibilities of the board of county commissioners or the governing body of the city.

The board of county commissioners of each county:

1. Shall designate one or more ~~voting~~ polling places for each precinct ~~and may alter the voting places when there is a good and sufficient reason.~~ However, the ~~voting~~ polling places for precincts located within the boundaries of any incorporated city must be designated, and altered if required, by the governing body of the city. Polling places may not be designated later than the sixty-fourth day before an election.
2. Shall provide that all ~~voting~~ polling places are accessible to the elderly and the physically disabled.
3. May utilize vote centers that contain all of the precincts in a county so that any qualified elector of the county may choose to cast a ballot in that polling ~~location~~ place. Qualified electors may vote early at early voting precincts, by absentee ballot, at a polling ~~location~~ place of their residential precinct, or at a county vote center. Vote center polling places must serve as a designated polling place for at least one precinct in the county in addition to serving as the site where any county voter may cast a ballot. ~~An individual voting or attempting to vote more than once in any single election is guilty of a class A misdemeanor.~~
4. May change the location of a polling place previously established by the sixty-fourth day immediately preceding an election when there is good and sufficient reason. When a polling place is changed under this provision, the name and location of the new polling place must be prominently posted on or near the main entrance of the prior polling place on the date of the first election held following the change.

SECTION 6. AMENDMENT. Section 16.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-01. Election officers.

At each primary, general, and special statewide or legislative district election, and at county elections, each polling place must have an election board in attendance. The election board must consist of an election inspector and at least two election judges. Counties utilizing polling places containing more than one precinct may choose to use one election board to supervise all precincts even if the precincts are within different legislative districts so long as each district chairman of each qualified political party is given the opportunity to have representation on the election board if desired.

1. The election inspector must be selected in the following manner:
 - a. Except as provided in subdivision b, in all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and fill all vacancies occurring in those offices.
 - b. In all multiprecinct polling locations~~locations~~places containing both rural and city precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
 - c. The election inspector shall serve until a successor is named. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy.

All appointments required to be made under this section must be made at least forty days preceding an election.

2. The election judges must be appointed in the following manner:
 - a. Except as provided in subdivision b:
 - (1) The election judges for each polling place must be appointed in writing by the district chairs representing the two parties that cast the largest number of votes in the state at the last general election. In polling places in which over one thousand votes are cast in any election, the county auditor may request each district party chair to appoint an additional election judge.
 - (2) The district party chair shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least forty days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges. If the county auditor has exhausted all practicable means to select judges from within the boundaries of the precincts within the polling place and vacancies still remain, the county auditor may select election judges who reside outside of the voting precinct but who reside within the polling place's legislative districts. If vacancies still remain, the county auditor may select election judges who reside outside of the legislative districts but who reside within the county.

- b. For special elections involving only no-party offices, the election official responsible for the administration of the election with the approval of the majority of the members of the applicable governing body shall appoint the election judges for each polling ~~location~~place.
3. If at any time before or during an election, it appears to an election inspector, by the affidavit of two or more qualified electors of the precinct, or precincts for a multiprecinct polling place, that any election judge is disqualified under this chapter, the inspector shall remove that judge at once and shall fill the vacancy by appointing a qualified individual of the same political party as that of the judge removed. If the disqualified judge had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.
4. The election official responsible for the administration of the election, with the approval of the majority of the members of the applicable governing body, shall appoint the poll clerks for each polling place. However, no fewer than two poll clerks must be appointed for each polling place. Poll clerks must be appointed based on their knowledge of election matters, attention to detail, and on any necessary technical knowledge.

⁶⁸ **SECTION 7. AMENDMENT.** Subsection 3 of section 16.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct or who does not meet the thirty-day residency requirement to the proper precinct and ~~voting location~~polling place.

SECTION 8. AMENDMENT. Section 16.1-05-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-08. County auditor to provide election board members with precinct maps or precinct finder.

The county auditor shall provide each precinct election board with an accurate precinct map or precinct finder to assist the election board member in determining whether an address is located in that precinct and for determining which precinct and polling ~~location~~place to which to direct an individual who may be attempting to vote incorrectly in that precinct.

SECTION 9. AMENDMENT. Subsection 2 of section 16.1-06-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Deliver to the inspector in each precinct or cause to be delivered in a secure manner to the polling ~~location~~place no later than the day before the election the number of ballots, pollbooks, ballot boxes, voting equipment, forms of oaths, and other election supplies as the county auditor determines necessary.

SECTION 10. AMENDMENT. Section 16.1-07-15 of the North Dakota Century Code is amended and reenacted as follows:

⁶⁸ Section 16.1-05-07 was also amended by section 6 of House Bill No. 1369, chapter 152.

16.1-07-15. Early voting precinct - Election board appointment - Closing and canvassing.

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixty-fourth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to chapters 16.1-13 and 16.1-15. At the determination of the county auditor, more than one ~~voting location~~polling place may be utilized for the purposes of operating the early voting precinct. The election board of the early voting precinct must be known as the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners establishes an early voting precinct according to this section, the following provisions apply:
 - a. Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the early voting center locations, dates, and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election.
 - b. The county auditor shall appoint the early voting precinct election board for each ~~early voting location~~polling place that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
 - c. The county auditor, with the consent of the board of county commissioners, shall designate each early voting ~~location~~polling place in a public facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02. With respect to polling places at early voting precincts, "election day" as used in sections 16.1-10-03 and 16.1-10-06.2 includes any time an early voting precinct polling place is open.
 - d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board, shall secure all election-related materials, including:
 - (1) The pollbooks and access to any electronically maintained pollbooks.
 - (2) The ballot boxes containing voted ballots.
 - (3) Any void, spoiled, and unvoted ballots.
 - e. Ballot boxes containing ballots cast at an early voting ~~location~~polling place may not be opened until the day of the election except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box in order to make room for additional ballots.

- f. Each early voting location ~~location~~ polling place may be closed, as provided in chapter 16.1-15, at the end of the last day designated for early voting in the county. Results from the early voting precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.
- g. The early voting precinct election board shall comply with the requirements of chapters 16.1-05, 16.1-13, and 16.1-15, as applicable.

SECTION 11. AMENDMENT. Section 16.1-10-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-10-06. Electioneering within boundary of an open polling ~~location~~ place.

1. An individual may not ask, solicit, or in any manner try to induce or persuade, any voter within a polling place or within one hundred feet [30.48 meters] from the entrance to the room containing a polling place while it is open for voting to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are displayed on fixed permanent billboards, may not, however, be deemed a violation of this section.
2. A vehicle or movable sign of any type containing a political message as described in subsection 1 may be allowed to remain within the restricted area only for the period of time necessary for the owner or operator of the vehicle or sign to complete the act of voting.
3. Except as provided in subsection 1, a sign placed on private property which displays a political message may not be restricted by a political subdivision, including a home rule city or county, unless the political subdivision demonstrates a burden to the public safety.

SECTION 12. 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 13. AMENDMENT. Section 40-02-10 of the North Dakota Century Code is amended and reenacted as follows:

40-02-10. Election returns - To whom made - Duty of board of county commissioners.

The election officials acting in each place in which votes are cast in an election held under this chapter shall return to the board of county commissioners which ordered the election a verified statement of the results of the election showing the number of votes cast for and against incorporation at their ~~voting~~ polling place. The returns shall be verified by the affidavit of the election officials. The returns shall be canvassed by the board of county commissioners, and the results of the canvass and of the election shall be entered upon the minutes of the proceedings of such board. If a majority of the votes cast on the question at the election favored incorporation, the board shall make an order declaring that the territory described in the petition has been incorporated as a city under the council form of government or as a city under the commission system of government, as the case may be, by the name described in the petition, stating that name, and shall cause the order to be entered in the minutes of its proceedings. If the territory is located in more than one county, a certified copy of such order shall be submitted immediately to each of the other counties within which a portion of the territory described in the order is situated. The auditor of each county to which a certified copy of the order is submitted shall make a record ~~thereof~~ of the order in the minutes of the board of county commissioners of such county.

SECTION 14. AMENDMENT. Section 44-02-05 of the North Dakota Century Code is amended and reenacted as follows:

44-02-05. Vacancy in board of county commissioners - How filled.

When a vacancy occurs in the board of county commissioners, the remaining members of the board immediately shall appoint some suitable person to fill the vacancy from the district in which the vacancy occurred. If a majority of the officers fails to agree upon a person to fill the vacancy, the county treasurer or, if the county does not have an elected treasurer, another elective county officer must be called in and shall act as an additional member of the board to fill the vacancy. The appointee holds office until the appointee's successor is elected at the next general election that occurs at least ~~sixty~~ sixty-nine-five days after the vacancy and the successor has qualified.

SECTION 15. AMENDMENT. Section 44-02-07 of the North Dakota Century Code is amended and reenacted as follows:

44-02-07. Brief vacancy not to be filled - Exception.

If a vacancy occurs within ~~sixty~~ sixty-nine-five days previous to an election at which it may be filled, no appointment may be made unless it is necessary to carry out such election and the canvass of the same according to law. In such case an appointment may be made at any time previous to such election to hold until after such election or until the appointee's successor is elected and qualified.

SECTION 16. AMENDMENT. Section 44-02-08 of the North Dakota Century Code is amended and reenacted as follows:

44-02-08. Appointment to be made in writing - Term.

Any appointment to fill a vacancy under this chapter must be made in writing, and, except as otherwise expressly provided by law, continues in force until the first general election that occurs at least ~~sixty~~ sixty-nine-five days after the vacancy, when the

vacancy will be filled by election, and thereafter until the appointee's successor by election is qualified.

SECTION 17. REPEAL. Section 16.1-04-03 of the North Dakota Century Code is repealed.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 155

SENATE BILL NO. 2343

(Senators Casper, Unruh, Wardner)
(Representatives Carlson, Kasper, Louser)

AN ACT to create and enact four new sections to chapter 16.1-08.1 of the North Dakota Century Code, relating to campaign disclosure statements and use of campaign contributions; to amend and reenact sections 16.1-08.1-01, 16.1-08.1-02.1, 16.1-08.1-03.1, 16.1-08.1-03.2, 16.1-08.1-03.3, and 16.1-08.1-03.5, subsection 3 of section 16.1-08.1-05, and subsection 5 of section 16.1-12-02.2 of the North Dakota Century Code, relating to definitions and campaign disclosure statements; to repeal sections 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.8, 16.1-08.1-03.9, 16.1-08.1-03.10, 16.1-08.1-03.11, 16.1-08.1-03.12, 16.1-08.1-03.13, and 16.1-08.1-04 of the North Dakota Century Code, relating to campaign disclosure statements; to provide a penalty; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.
2. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
3. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
 - a. An individual holding public office;

- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
 - c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
 - d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
 - e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.
4. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.
5. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:
- a. A loan of money from a bank or other lending institution made in the regular course of business.
 - b. Time spent by volunteer campaign or political party workers.
 - c. Money 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 anything other than a political purpose or to influence the performance of that person's official duty.

- ~~f.e.~~ Contributions of products ~~Products~~ or services for which the actual cost or fair market value are reimbursed by a payment of money.
- ~~g.f.~~ An independent expenditure.
- ~~g.~~ The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.
- ~~h.~~ In-kind contributions from a candidate to the candidate's campaign.
6. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.
7. "Expenditure" means:
- A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
 - A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
 - The transfer of funds by a political committee to another political committee.
 - An independent expenditure.;;
- ~~8. "Incidental committee" means a committee, club, association, or other group of persons that makes a contribution or expenditure, but for which making contributions and expenditures for political purposes is not its primary purpose.~~ "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:
- Advertising;
 - Campaign loan repayment;
 - Operations;
 - Travel; and
 - Miscellaneous.
9. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate ~~or a candidate,~~ committee, or ~~measure committee~~ political party.

10. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
11. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
12. "Personal benefit" means a benefit to the candidate or another person which is not for a political purpose or related to a candidate's responsibilities as a public officeholder, and any other benefit that would convert a contribution to personal income.
13. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes the following:
 - a. A political action committee not connected to another organization and free to solicit funds from the general public, or derived from a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or an association ~~that is prohibited from making a contribution for political purposes under section 16.1-08.1-03.5, and which that solicits or receives contributions from its employees or members or makes expenditures for political purposes on behalf of its employees or members;~~
 - b. A candidate committee, established to support an individual candidate seeking ~~statewide, judicial, or legislative~~public office which solicits or receives contributions for political purposes;
 - c. A political organization ~~governed by the Internal Revenue Code and~~ registered with the federal election commission, which solicits or receives contributions or makes expenditures for political purposes;
 - d. A multicandidate political committee, including a caucus, established to support multiple groups or slates of candidates seeking public office, ~~that~~which solicits or receives contributions for political purposes; and
 - e. A measure committee, including an initiative or referendum sponsoring committee at any stage of its organization, which solicits or receives contributions or makes expenditures for the purpose of aiding or opposing a measure sought to be voted upon by the voters of the state, including any activities undertaken for the purpose of drafting an initiative or referendum petition, seeking approval of the secretary of state for the circulation of a petition, or seeking approval of the submitted petitions; ~~and~~
 - f. An incidental committee.
- 13-14. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
- 14-15. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using

"vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state public office or any position taken in any bona fide news story, commentary, or editorial.

45-16. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

46-17. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

SECTION 2. AMENDMENT. Section 16.1-08.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-02.1. State political party convention revenue and expense statement required.

1. State political parties shall establish separate and segregated accounts for the management of state nominating conventions. All revenue obtained and expenditures made for the planning and running of a state convention must be accounted for in these accounts.
2. A postconvention statement must be filed with the secretary of state sixty days after the close of the state nominating convention. The reporting period for the postconvention statement begins on the first day of January of the reporting year and ends thirty days after the close of the state nominating convention.
3. A year-end statement covering the entire calendar year must be filed with the secretary of state ~~no later than the thirty first day of January~~before February first of the following year even if no convention revenue was received or expenditures made within the calendar year.
4. The statement filed according to this section must show the following:
 - a. The ~~cash on hand in balance of~~ balance of the filer's convention accounts at the start and close of the reporting period;
 - b. The ~~gross~~ total of all revenue received and expenditures made of two hundred dollars, or less;
 - c. The ~~gross~~ total of all revenue received and expenditures made in excess of two hundred dollars;
 - d. ~~The~~For each aggregated ~~totals of all~~ revenue received from a single person ~~or entity~~ in excess of two hundred dollars, ~~the~~:
 - (1) The name of each person ~~or entity~~, ~~the~~;
 - (2) The mailing address of each person ~~or entity~~, ~~the~~;

- (3) ~~The date of the most recent receipt of revenue from each person or entity, and the; and~~
- (4) ~~The purpose or purposes for which the aggregated revenue total was received from each person or entity;~~
- e. ~~The aggregated totals of all expenditures~~For each aggregated expenditure made to a single person or entity in excess of two hundred dollars, the:
- (1) ~~The name of each person or entity, the;~~
- (2) ~~The mailing address of each person or entity, the;~~
- (3) ~~The date of the most recent expense made to each person or entity, and the; and~~
- (4) ~~The purpose or purposes for which the aggregated expenditure total was disbursed to each person or entity; and~~
- f. ~~A political party shall report~~For each aggregated revenue from an individual which totals five thousand dollars or more during the reporting period, the occupation, employer, and principal place of business of each person from whom five thousand dollars or more of revenue was received in the aggregate during the reporting period the individual must be disclosed.
5. ~~For the purposes of this section, the term entity is defined as any group consisting of or representing more than one person.~~
6. ~~If a net gain from the convention is transferred to the accounts established for the support of the nomination or election of candidates, the total transferred must be reported as a contribution in the statements required by section 16.1-08.1-035 of this Act.~~
- ~~7.6.~~ If a net loss from the convention is covered by a transfer from the accounts established for the support of the nomination or election of candidates, the total transferred must be reported as an expenditure in the statements required by section 16.1-08.1-035 of this Act.

SECTION 3. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

State political party building fund statement required.

A state political party or nonprofit entity affiliated with or under the control of a state political party which receives a donation for purchasing, maintaining, or renovating a building shall file a statement with the secretary of state before February first of each calendar year. Any income or financial gain generated from a building purchased, maintained, or renovated from donations must be deposited in the building fund and must be disclosed when the political party or nonprofit entity files the statement required under this section. Money in the fund may be used only 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 including the purchase of fixtures for the building. The statement may be submitted for filing beginning on January first and must include:

1. The balance of the building fund on January first;
2. The name and mailing address of each donor;
3. The amount of each donation;
4. The date each donation was received;
5. The name and mailing address of each recipient of an expenditure;
6. The amount of each expenditure;
7. The date each expenditure was made; and
8. The balance of the fund on December thirty-first.

SECTION 4. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Pre-election, supplemental, and year-end campaign disclosure statement requirements for candidates, candidate committees, multicandidate committees, and nonstatewide political parties.

1. Prior to the thirty-first day before a primary, general, or special election, a candidate or candidate committee formed on behalf of the candidate, a multicandidate political committee, or a political party other than a statewide political party soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received from January first through the fortieth day before the election. A candidate whose name is not on the ballot and who is not seeking election through write-in votes, the candidate's candidate committee, and a political party that has not endorsed or nominated any candidate in the election is not required to file a statement under this subsection. The statement may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:
 - a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and
 - (3) The date the last contributed amount was received;
 - b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars during the reporting period;
 - c. The total of all contributions received from contributors that contributed two hundred dollars or less each during the reporting period; and
 - d. For a statewide candidate, a candidate committee formed on behalf of a statewide candidate, and a statewide multicandidate committee, the balance of the campaign fund on the fortieth day before the election and the balance of the campaign fund on January first.

2. Beginning on the thirty-ninth day before the election through the day before the election, a person that files a statement under subsection 1 must file a supplemental statement within forty-eight hours of the start of the day following the receipt of a contribution or aggregate contribution from a contributor which is in excess of five hundred dollars. The statement must include:
 - a. The name and mailing address of the contributor;
 - b. The total amount of the contribution received during the reporting period; and
 - c. The date the last contributed amount was received.
3. Prior to February first, a candidate or candidate committee, a multicandidate political committee, or a nonstatewide political party soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures, by expenditure category, made from January first through December thirty-first of the previous year. The statement may be submitted for filing beginning on January first. The statement must include:
 - a. For a statewide candidate, a candidate committee formed on behalf of a statewide candidate, and a statewide multicandidate committee, the balance of the campaign fund on January first and on December thirty-first;
 - b. For each aggregated contribution from a contributor which totals in excess of two hundred dollars received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and
 - (3) The date the last contributed amount was received;
 - c. The total of all aggregated contributions from contributors which total in excess of two hundred dollars during the reporting period;
 - d. The total of all contributions received from contributors that contributed two hundred dollars or less each during the reporting period; and
 - e. The total of all other expenditures made during the previous year, separated into expenditure categories.
4. A person required to file a statement under this section, other than a candidate for judicial office, county office, or city office, or a candidate committee for a candidate exempted under this subsection, shall report each aggregated contribution from a contributor which totals five thousand dollars or more during the reporting period. For these contributions from individuals, the statement must include the contributor's occupation, employer, and the employer's principal place of business.
5. A candidate for city office in a city with a population under five thousand and a candidate committee for the candidate are exempt from this section.

6. A candidate for county office and a candidate committee for a candidate for county office shall file statements under this chapter with the county auditor. A candidate for city office who is required to file a statement under this chapter and a candidate committee for such a candidate shall file statements with the city auditor. Any other person required to file a statement under this section shall file the statement with the secretary of state.
7. The filing officer shall assess and collect fees for any reports filed after the filing deadline.
8. To ensure accurate reporting and avoid commingling of campaign and personal funds, candidates shall use dedicated campaign accounts that are separate from any personal accounts.

SECTION 5. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Pre-election, supplemental, and year-end campaign disclosure statement requirements for statewide political parties and certain political committees.

1. Prior to the thirty-first day before a primary, general, or special election, a statewide political party or a political committee not required to file statements under section 4 of this Act which is soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. A political party that has not endorsed or nominated a candidate in an election is not required to file a statement under this subsection. A statement required to be filed under this subsection may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:
 - a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and
 - (3) The date the last contributed amount was received;
 - b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars during the reporting period;
 - c. The total of all contributions received from contributors that contributed two hundred dollars or less each during the reporting period;
 - d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars in the aggregate:
 - (1) The name and mailing address of the recipient;
 - (2) The total amount of the expenditure made to the recipient; and
 - (3) The date the last expended amount was made to the recipient;
 - e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars;

- f. The aggregate total of all expenditures from campaign funds of two hundred dollars or less; and
 - g. The balance of the campaign fund on the fortieth day before the election and balance of the campaign fund on January first.
2. Beginning on the thirty-ninth day before the election through the day before the election, a person that files a statement under subsection 1 must file a supplemental statement within forty-eight hours of the start of the day following the receipt of a contribution or aggregate contribution from a contributor which is in excess of five hundred dollars. The statement must include:
 - a. The name and mailing address of the contributor;
 - b. The total amount of the contribution received during the reporting period; and
 - c. The date the last contributed amount was received.
3. Prior to February first, a statewide political party or a political committee that is not required to file a statement under section 4 of this Act shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through December thirty-first of the previous year. The statement may be submitted for filing beginning on January first. The statement must include:
 - a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and
 - (3) The date the last contributed amount was received;
 - b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars during the reporting period;
 - c. The total of all contributions received from contributors that contributed two hundred dollars or less each during the reporting period;
 - d. For each recipient of an expenditure from campaign funds in excess of two hundred dollars in the aggregate:
 - (1) The name and mailing address of the recipient;
 - (2) The total amount of the expenditure made to the recipient; and
 - (3) The date the last expended amount was made to the recipient;
 - e. The aggregate total of all expenditures from campaign funds in excess of two hundred dollars;
 - f. The aggregate total of all expenditures from campaign funds of two hundred dollars or less; and

- g. The balance of the campaign fund on January first and December thirty-first.
4. A person required to file a statement under this section shall disclose each aggregated contribution from a contributor which totals five thousand dollars or more during the reporting period. For these contributions from individuals, the statement must include the contributor's occupation, employer, and the employer's principal place of business.
5. Statements under this section must be filed with the secretary of state.
6. The secretary of state shall assess and collect fees for any reports filed after the filing deadline.

⁶⁹ **SECTION 6. 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 statementSpecial requirements for statements required of measure committees circulating or promoting passage or defeat of initiated or referred measure.

- ~~1. Any person or measure committee, as described in section 16.1-08.1-01, that 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 subsection if the person has received any contribution in excess of one hundred dollars. The statement must include the name and mailing address of 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. A person or measure committee as described in section 16.1-08.1-01 which 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 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 that contributed more than one hundred dollars of the contribution. The statement must indicate if no 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 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 shall include this statement with the contribution statement required to be filed under subsection 1.~~

⁶⁹ Section 16.1-08.1-03.1 was also amended by section 5 of House Bill No. 1002, chapter 2, and section 1 of House Bill No. 1362, chapter 156.

- ~~3. The statement required of a person or measure committee under subsection 1 must be filed with the secretary of state no later than the thirty-second 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 fortieth day before the date of the election. A complete statement for the entire calendar year for each statement required to be filed under this section must be filed no later than the thirty-first day of January of the following year. Even if a person required to report according to this section has not received any contributions in excess of one hundred dollars during the reporting period, the person shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:~~
 - ~~a. The gross total of all contributions received and expenditures made in excess of one hundred dollars;~~
 - ~~b. The gross total of all contributions received and expenditures made of one hundred dollars, or less; and~~
 - ~~c. The cash on hand in the filer's account at the start and close of the reporting period~~For each reportable contribution and expenditure under section 5 of this Act, the threshold for reporting is one hundred dollars for any person or measure committee circulating or promoting passage or defeat of an initiated or referred measure.
- ~~2. For contributions received from an out-of-state contributor, a person or measure committee circulating or promoting passage or defeat of an initiated or referred measure shall include the following information regarding subcontributors in the statements required under section 5 of this Act:~~
 - ~~a. A designation as to whether any person contributed in excess of one hundred dollars of the total contribution;~~
 - ~~b. The name and mailing address of each subcontributor that contributed in excess of one hundred dollars of the total contribution;~~
 - ~~c. The contribution amounts of each disclosed subcontributor; and~~
 - ~~d. The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor.~~
- ~~3. An initiative and referendum sponsoring committee also shall file a disclosure statement by the date the secretary of state approves the petition for circulation, and shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year-end statements under section 5 of this Act.~~
- ~~4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.~~

SECTION 7. AMENDMENT. Section 16.1-08.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.2. Political committee and candidate registration.

1. A political committee as defined in section 16.1-08.1-01 shall register its name and contact information, its agent's name and contact information, and a designation as to whether the committee is incorporated solely for the purpose of liability protection, with the secretary of state. A candidate who does not have a candidate committee shall register the candidate's name and contact information and, if the candidate has an agent, the agent's name and contact information with the secretary of state. The registration required under this section for a candidate or political committee that has not previously registered with the secretary of state must be submitted within fifteen business days of the receipt of any contribution or expenditure made.
2. A candidate or political committee required to be registered under this section must register with the secretary of state each year during which the candidate holds public office or during which the political committee receives contributions ~~or~~ makes expenditures for political purposes, or has a balance in the campaign account. An individual who no longer holds public office or an individual who no longer seeks public office must register with the secretary of state each year in which contributions are received ~~or~~ expenditures are made for political purposes, or has a balance in the campaign account.
3. A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office, a political party, or political committee in this state is not required to register as a political committee according to this section if the political committee reports according to section 16.1-08.1-03.7.
4. ~~An incidental political committee is required to register under this section only as a result of making a reportable expenditure or contribution in the aggregate during any reporting period, but the registration under this section does not change the nature of business for the organization.~~
5. Registration by a political committee under this section does not reserve the name for exclusive use nor does it constitute registration of a trade name under chapter 47-25.

SECTION 8. AMENDMENT. Section 16.1-08.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.3. Campaign contributions by corporations, cooperative corporations, limited liability companies, affiliates, subsidiaries, and associations - Violation - Penalty - Political action committees authorized.

1. A corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association may establish, administer, and solicit contributions to a separate and segregated fund to be utilized for political purposes by the corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association. It is unlawful for:
 - a. The person or persons controlling the fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilize money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of

- employment; or utilize money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund.
- b. Any person soliciting an employee, stockholder, patron, board member, or member for a contribution to the fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation or of the general political philosophy intended to be advanced through committee activities.
 - c. Any person soliciting an employee or member for a contribution to the fund to fail to inform the employee or member at the time of the solicitation of the right to refuse to contribute without any reprisal.
 - d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed and of amounts expended for political purposes.
 - e. Any contribution to be accepted from any person who is not an employee, a stockholder, a patron, a board member or a member of the corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association maintaining the political action committee, except a corporation may accept a contribution from an employee, a stockholder, a patron, a board member, or a member of an affiliate or a subsidiary of the corporation.
 - f. Any expenditure made for political purposes to be reported under this section before control of the expenditure has been released by the political action committee except if there is a contract, a promise, or an agreement, expressed or implied, to make such expenditure.
2. ~~All political action committees, as described in section 16.1-08.1-01, formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of two hundred dollars in the aggregate made for political purposes with the secretary of state. The statement must include the amount of each reportable contribution and the date it was received and the amount of each reportable expenditure and the date it was made. A year-end statement covering the entire calendar year must be filed no later than the thirty first day of January of the following year. A pre-election statement must be filed no later than the thirty second day before any primary, special, or general election and must be complete from the beginning of the calendar year through the fortieth day before the election. Even if a political action committee has not received any contributions or made any expenditures in excess of two hundred dollars during the reporting period, the political action committee shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:~~
- a. ~~The gross total of all contributions received and expenditures made in excess of two hundred dollars;~~

- b. ~~The gross total of all contributions received and expenditures made of two hundred dollars, or less; and~~
- e. ~~The cash on hand in the filer's account at the start and close of the reporting period.~~
3. ~~A political action committee shall report the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, who contributed five thousand dollars or more in the aggregate during the reporting period.~~
4. ~~A person may not make a payment of that person's money or of another person's money to any other person for a political purpose in any name other than that of the person ~~who~~that supplies the money and a person may not knowingly receive the payment nor enter nor cause the payment to be entered in that person's account or record in any name other than that of the person by ~~whom~~which it actually was furnished.~~
- 5-3. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, limited liability company, affiliate, subsidiary, or association funds or otherwise violates this section, it is prima facie evidence of a violation by the corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association.
- 6-4. A violation of this section may be prosecuted in the county where the contribution is made or in any county in which it has been paid or distributed.
- 7-5. It is a class A misdemeanor for an officer, director, stockholder, manager, governor, member, attorney, agent, or representative of any corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association to violate this section or to counsel or consent to any violation. Any person ~~who~~that solicits or knowingly receives any contribution in violation of this section is guilty of a class A misdemeanor.
- 8-6. Any officer, director, stockholder, manager, governor, member, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section is liable to the company, corporation, limited liability company, affiliate, subsidiary, or association for the amount so contributed.

SECTION 9. 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. Corporate contributions and expenditures - ReportStatement required.

1. Corporations, cooperative corporations, limited liability companies, affiliates, subsidiaries, 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, affiliate, subsidiary, or association other than a "political purpose" as defined by this chapter. A corporation, cooperative corporation, limited liability company,

affiliate, subsidiary, or association may not make a contribution for a political purpose.

2. A corporation, cooperative corporation, limited liability company, affiliate, subsidiary, 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 building 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, affiliate, subsidiary, or association may make an expenditure to a measure committee as described in section 16.1-08.1-01 for the purpose of promoting the passage or defeat of an initiated or referred measure or petition or make an expenditure to any other person that makes an independent expenditure. A corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association may make an independent expenditure for a political purpose, including political advertising in support of or opposition to a candidate, political committee, or a political party, or for the purpose of promoting passage or defeat of initiated or referred measures or petitions. The corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association shall file a statement disclosing any expenditure made under this subsection 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, affiliate, subsidiary, or association;
 - b. The complete address of the corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association;
 - c. The name of the recipient of the expenditure;
 - d. If the expenditure is related to a measure or petition, the title of the measure or petition and whether the expenditure is made in support of or opposition to the measure or petition;
 - e. If the expenditure is related to a measure, 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 which are required to be reported under this subsection;
- h. The telephone number and the printed name and signature of the individual completing the statement, attesting to the statement being true, complete, and correct; and
- i. The date on which the statement was signed.

SECTION 10. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Personal use of contributions prohibited.

A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:

1. Give a personal benefit to the candidate or another person;
2. Make a loan to another person;
3. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
4. Pay a criminal fine or civil penalty.

SECTION 11. AMENDMENT. Subsection 3 of section 16.1-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. An audit may not be made or requested of a statement for the sole reason that it was not timely filed with the secretary of state. An audit made or arranged according to this section must audit only those items required to be included in any statement, registration, or report filed with the secretary of state according to this chapter. The secretary of state may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer. Any remaining moneys collected by the secretary of state after an audit is paid for under this section must be deposited in the state's general fund. This section does not apply to statements filed ~~according to sections 16.1-08.1-03.10 and 16.1-08.1-03.11~~ by candidates or candidate committees for candidates for county or city offices.

SECTION 12. AMENDMENT. Subsection 5 of section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

5. An individual who intends to be a write-in candidate for any legislative district office shall file a certificate of write-in candidacy with the secretary of state. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election. ~~When the candidate files a certificate, the candidate also shall file the contribution statement provided for under section 16.1-08.1-02 complete through the day of the filing of the certificate.~~

SECTION 13. REPEAL. Sections 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.8, 16.1-08.1-03.9, 16.1-08.1-03.10, 16.1-08.1-03.11, 16.1-08.1-03.12, 16.1-08.1-03.13, and 16.1-08.1-04 of the North Dakota Century Code are repealed.

SECTION 14. EFFECTIVE DATE. This Act becomes effective on February 1, 2018.

SECTION 15. APPLICATION. The provisions of this Act apply for campaign years that begin after December 31, 2017.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 156

HOUSE BILL NO. 1362

(Representatives Dockter, Steiner)

AN ACT to amend and reenact subsection 2 of section 16.1-08.1-03.1 and subsection 1 of section 16.1-08.1-06 of the North Dakota Century Code, relating to campaign finance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁰ **SECTION 1. AMENDMENT.** Subsection 2 of section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A person or measure committee as described in section 16.1-08.1-01 which 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 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 that contributed more than one hundred dollars of the contribution. The statement must indicate if no 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 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 shall include this statement with the contribution statement required to be filed under subsection 1.

SECTION 2. AMENDMENT. Subsection 1 of section 16.1-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Any statement required by this chapter to be filed with the secretary of state must be:
 - a. Filed electronically with the secretary of state and must be within the prescribed time and in the format established by the secretary of state. If the secretary of state does not receive a statement, an electronic duplicate of the statement must be promptly filed upon notice by the secretary of state of its nonreceipt. After a statement has been filed, the secretary of state may request or accept written clarification along with an amended statement from a candidate, political party, or political committee filing the statement when discrepancies, errors, or omissions on the statement are discovered by the secretary of state, the candidate, political party, or political committee filing the statement, or by any interested party reciting a

⁷⁰ Section 16.1-08.1-03.1 was also amended by section 5 of House Bill No. 1002, chapter 2, and section 6 of Senate Bill No. 2343, chapter 155.

lawful reason for requesting clarification and an amendment be made. When requesting an amended statement, the secretary of state shall establish a reasonable period of time, not to exceed ten days, agreed to by the candidate, political party, or political committee, for filing the amended statement with the secretary of state.

- b. Preserved by the secretary of state for a period of ten years from the date of the filing deadline. The statement is to be considered a part of the public records of the secretary of state's office and must be open to public inspection on the internet.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 157

HOUSE BILL NO. 1234

(Representatives Mock, Carlson)
(Senators Heckaman, Wardner)

AN ACT to create and enact section 16.1-8.1-03.15 of the North Dakota Century Code, relating to prohibiting campaign contributions from and expenditures by foreign nationals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 16.1-08.1-03.15 of the North Dakota Century Code is created and enacted as follows:

16.1-08.1-03.15. Contributions from and expenditures by foreign nationals prohibited.

1. A foreign national may not make or offer to make, directly or indirectly, a contribution or expenditure in connection with any election.
2. A candidate, candidate committee, political party, or any other person may not solicit, accept, or receive, directly or indirectly, a contribution from a foreign national.
3. For purposes of this section, unless the context otherwise requires, "foreign national" means a person that is:
 - a. A foreign government;
 - b. A foreign political party;
 - c. A foreign corporation, partnership, association, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country;
 - d. An individual with foreign citizenship; or
 - e. An individual who is not a citizen or national of the United States and is not admitted lawfully to the United States for permanent residence.

Approved March 22, 2017

Filed March 23, 2017

ENERGY

CHAPTER 158

HOUSE BILL NO. 1181

(Representatives Toman, Klemin, Longmuir, Pollert, Steiner, Streyle)
(Senators Cook, Klein, Schaible)

AN ACT to amend and reenact sections 17-04-01, 17-04-03, and 17-04-05 of the North Dakota Century Code, relating to termination of wind option agreements, wind easements, and wind energy leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-04-01 of the North Dakota Century Code is amended and reenacted as follows:

17-04-01. Wind option agreement - Definition - Termination.

1. A wind option agreement is a contract in which the owner of property gives another the right to produce energy from wind power on that property at a fixed price within a time period not to exceed five years on agreed terms.
2. A wind option agreement is void and terminates if the following have not occurred with respect to the property that is the subject of the wind option agreement within five years after the wind option agreement commences:
 1. a. A certificate of site compatibility or conditional use permit has been issued, if required; and
 2. b. A transmission interconnection request is in process and not under suspension.
3. If the requirements of subsection 2 are not met by the owner of the wind option agreement, the owner of the energy rights may provide to the owner of the wind option agreement a notice of termination, by certified mail or other personal delivery, and file the notice with the county recorder in the county in which the real property is located. Termination of the wind option agreement is effective five years after the wind option commences.

SECTION 2. AMENDMENT. Section 17-04-03 of the North Dakota Century Code is amended and reenacted as follows:

17-04-03. Wind easements - Creation - Term - Development required.

1. A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property.
2. The easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement. ~~However, the, however:~~

- a. The easement is void if the following have not occurred with respect to the property that is the subject of the easement within five years after the easement commences:
 - 1- (1) A certificate of site compatibility or conditional use permit has been issued, if required; and
 - 2- (2) A transmission interconnection request is in process and not under suspension.
- b. A wind easement is presumed to be abandoned if a period of thirty-six consecutive months has passed with no construction or operation of the wind farm facility. If the operator of the wind farm facility does not file a plan with the public service commission outlining the steps and schedule for continuing construction or operation of the facility within the thirty-six month period, the owner of the energy rights may provide, by certified mail or other personal delivery to the owner of the wind easement, a sixty-day written notice of the intent to terminate the easement. If, within sixty days of the receipt of the notice of the intent to terminate, the owner of the easement fails to provide a written objection to the notice by certified mail or other personal delivery, the owner of the energy rights may file a notice of termination with the county recorder in the county in which the real property is located. Termination of the easement becomes effective when the notice of termination is filed and recorded with the county recorder.

SECTION 3. AMENDMENT. Section 17-04-05 of the North Dakota Century Code is amended and reenacted as follows:

17-04-05. Wind energy leases - Termination.

1. A lease for wind energy purposes is void and terminates if the following have not occurred with respect to the property that is the subject of the lease within five years after the lease commences:
 - 4- a. A certificate of site compatibility or conditional use permit has been issued, if required; and
 - 2- b. A transmission interconnection request is in process and not under suspension.
2. A wind lease is presumed to be abandoned if a period of thirty-six consecutive months has passed with no construction or operation of the wind farm facility. If the operator of the wind farm facility does not file a plan with the public service commission outlining the steps and schedule for continuing construction or operation of the facility within the thirty-six month period, the owner of the energy rights may provide, by certified mail or other personal delivery to the owner of the wind easement, a sixty-day written notice of the intent to terminate the lease. If, within sixty days of the receipt of the notice of the intent to terminate, the owner of the lease fails to provide a written objection to the notice by certified mail or other personal delivery, the owner of the energy rights may file a notice of termination with the county recorder in the county in which the real property is located. Termination of the easement becomes effective when the notice of termination is filed and recorded with the county recorder.

Approved April 13, 2017

Filed April 13, 2017

FIRES

CHAPTER 159

SENATE BILL NO. 2316

(Senators Oehlke, Schaible, Grabinger)
(Representatives Dockter, Pyle, Guggisberg)

AN ACT to amend and reenact sections 18-01-06, 18-01-33, 18-04-01, 18-12-03, 18-12-05, and 18-12-25 of the North Dakota Century Code, relating to powers and duties of the state fire marshal regarding explosives, participation in the fire insurance tax distribution fund, and the submission of plans and specifications for school buildings; to repeal sections 18-01-34 and 18-10-16 of the North Dakota Century Code, relating to disclosure of information concerning toxic or hazardous substances and the duty of the state fire marshal to establish a rural routing system; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-01-06 of the North Dakota Century Code is amended and reenacted as follows:

18-01-06. Fire chiefs and auditors or secretaries of cities and rural fire protection districts must report fires.

Within ~~five~~thirty days after the occurrence of any fire in which property in a city or rural fire protection district has been destroyed or damaged in an amount which exceeds twenty-five dollars, an organization that is contracted by a political subdivision for fire protection or the fire chief of such city or rural fire protection district, if a fire department is maintained therein, or the auditor of the city or the secretary of the rural fire protection district, if a fire department is not maintained therein, shall report the cause, if known, and the origin and circumstances of the fire and the name of the owner and occupant of such property, to the state fire marshal or enter the information in the national fire incident reporting system software. Such report must show whether such fire was the result of carelessness, accident, or design. The provisions of this section must be complied with, insofar as the same are applicable, if the fire is of unknown origin, regardless of the amount of damage caused thereby.

SECTION 2. AMENDMENT. Section 18-01-33 of the North Dakota Century Code is amended and reenacted as follows:

18-01-33. State fire marshal may adopt rules for explosives - Penalty.

The state fire marshal may adopt safety rules for the storage, sale, and use of combustibles and explosives, not otherwise provided by law. Any person who willfully refuses to comply with the safety rules adopted by the state fire marshal is guilty of a class B misdemeanor. Rules adopted by the state fire marshal may not be more restrictive than those promulgated by the ~~national fire codes of the national fire protection association~~state and local building and fire codes and do not apply to the

transportation of explosives and dangerous articles regulated by the interstate commerce commission. The state fire marshal may make reasonable provision for the application or nonapplication of all or any portion of the national fire codes.

SECTION 3. AMENDMENT. Section 18-04-01 of the North Dakota Century Code is amended and reenacted as follows:

18-04-01. Eligibility for participation in fund created from premium tax on fire insurance companies.

1. To become eligible for the benefits provided under this chapter, a city, or one or more townships or fire districts, shall maintain therein for ~~a period of~~ at least eight months before the filing of the certificate required under section 18-04-02 ~~an organized~~ fire district, fire protection district, or department which that:
4.
 - a. Has been in actual existence for the period specified in this section;
 2. b. MeetsProvides the minimum requirements for class 9 fire protection or better; and
 3. c. Has been in compliance with the requirements to report fires as set forth in section 18-01-06.
2. Change in a fire department's name, or incorporation into a fire district, ~~must be~~ deemed a waiver of the eight-month waiting period for filing a certificate of existence under section 18-04-02.

SECTION 4. AMENDMENT. Section 18-12-03 of the North Dakota Century Code is amended and reenacted as follows:

18-12-03. Plans and specifications.

Plans and specifications for all new public school buildings and for all additions to and remodeling of existing public school buildings must be submitted for approval to the state fire marshal, chief of the fire department or fire protection district with jurisdiction, and the superintendent of public instruction or to the state board of higher education. In the case of privatePrivate school plans and specifications, they must be submitted directly to the state fire marshal and the chief of the fire department or fire protection district with jurisdiction for approval.

SECTION 5. AMENDMENT. Section 18-12-05 of the North Dakota Century Code is amended and reenacted as follows:

18-12-05. State fire marshal.

The state fire marshal and the chief of the fire department or fire protection district shall approve plans and specifications for school buildings before construction is started. ~~The state fire marshal shall review public school building plans upon referral from the superintendent of public instruction or the state board of higher education. In the case of private school buildings the architects and engineers preparing plans shall submit them to the state fire marshal for approval. It is the duty of the architect or engineer preparing~~person that prepared the plans or the person that is supervising the construction to notify the state fire marshal and the chief of the fire department or fire protection district when the building has been completed.

SECTION 6. AMENDMENT. Section 18-12-25 of the North Dakota Century Code is amended and reenacted as follows:

18-12-25. Reference data.

The following data must be used as reference and as an aid in the interpretation of this chapter:

1. ~~State building code~~ State and local fire and building codes.
2. ~~The national fire codes—national fire protection association~~
3. ~~The~~ National Electrical Code - national fire protection association.
3. The national fire protection association.

SECTION 7. REPEAL. Sections 18-01-34 and 18-10-16 of the North Dakota Century Code are repealed.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 160

HOUSE BILL NO. 1380

(Representatives Guggisberg, Rich S. Becker, Pollert)
(Senators Grabinger, Klein, Oban)

AN ACT to create and enact a new section to chapter 18-03 of the North Dakota Century Code, relating to the authority of the North Dakota firefighter's association; 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 18-03 of the North Dakota Century Code is created and enacted as follows:

North Dakota firefighter's association - Duties and authority.

The North Dakota firefighter's association shall:

1. Develop and adopt a statewide fire education and training plan;
2. Coordinate fire service training at all levels; and
3. Establish procedures to govern the certification process for firefighter training.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA FIREFIGHTER'S ASSOCIATION. During the 2017-18 interim, the legislative management shall consider studying the duties and role of the North Dakota firefighter's association. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved March 22, 2017

Filed March 23, 2017

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 161

SENATE BILL NO. 2258

(Senators Klein, Armstrong, Casper)
(Representatives Dockter, Keiser, Vigesaa)

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to pharmacy claim fees and pharmacy rights; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Pharmacy claim fees and pharmacy rights - Pharmacy benefits managers - Penalty.

1. As used in this section:
 - a. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.
 - b. "Plan sponsor" has the same meaning as in section 19-03.6-01.
 - c. "Third-party payer" has the same meaning as in section 19-03.6-01.
2. A pharmacy benefits manager or third-party payer may not directly or indirectly charge or hold a pharmacy responsible for a fee related to a claim:
 - a. That is not apparent at the time of claim processing;
 - b. That is not reported on the remittance advice of an adjudicated claim; or
 - c. After the initial claim is adjudicated at the point of sale.
3. Pharmacy performance measures or pay for performance pharmacy networks shall utilize the electronic quality improvement platform for plans and pharmacies or other unbiased nationally recognized entity aiding in improving pharmacy performance measures.
 - a. A pharmacy benefits manager or third-party payer may not collect a fee from a pharmacy if the pharmacy's performance scores or metrics fall within the criteria identified by the electronic quality improvement platform for plans and pharmacies or other unbiased nationally recognized entity aiding in improving pharmacy performance measures.

- b. If a pharmacy benefits manager or third-party payer imposes a fee upon a pharmacy for scores or metrics or both scores and metrics that do not meet those established by the electronic quality improvement platform for plans and pharmacies or other nationally recognized entity aiding in improving pharmacy performance measures, a pharmacy benefits manager or third-party payer is limited to applying the fee to the professional dispensing fee outlined in the pharmacy contract.
- c. A pharmacy benefits manager or third-party payer may not impose a fee relating to performance metrics on the cost of goods sold by a pharmacy.
4. A pharmacy benefits manager or third-party payer may not charge a patient a copayment that exceeds the cost of the medication. If a patient pays a copayment, the dispensing provider or pharmacy shall retain the adjudicated cost and the pharmacy benefits manager or third-party payer may not redact the adjudicated cost.
5. A pharmacy benefits manager or third-party payer may not prohibit a pharmacist or pharmacy from participating in a class action lawsuit. A pharmacy or pharmacist may disclose to the plan sponsor or to the patient information regarding the adjudicated reimbursement paid to the pharmacy which is compliant under the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].
6. A pharmacist or pharmacy that belongs to a pharmacy service administration organization may receive a copy of a contract the pharmacy service administration organization entered with a pharmacy benefits manager or third-party payer on the pharmacy's or pharmacist's behalf.
7. A pharmacy or pharmacist may provide relevant information to a patient if the patient is acquiring prescription drugs. This information may include the cost and clinical efficacy of a more affordable alternative drug if one is available. Gag orders of such a nature placed on a pharmacy or pharmacist are prohibited.
8. A pharmacy or pharmacist may mail or deliver drugs to a patient as an ancillary service of a pharmacy.
9. A pharmacy benefits manager or third-party payer may not prohibit a pharmacist or pharmacy from charging a shipping and handling fee to a patient requesting a prescription be mailed or delivered.
10. Upon request, a pharmacy benefits manager or third-party payer shall provide a pharmacy or pharmacist with the processor control number, bank identification number, and group number for each pharmacy network established or administered by a pharmacy benefits manager to enable the pharmacy to make an informed contracting decision.
11. A pharmacy benefits manager or third-party payer may not require pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements for licensure as a pharmacy in this state.

12. A pharmacy benefits manager or other third-party payer that violates this section is guilty of a class B misdemeanor per violation occurrence.

SECTION 2. APPLICATION. This Act applies to contracts and agreements in effect on and after the effective date of this Act.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 162

SENATE BILL NO. 2301

(Senators Anderson, Dever, J. Lee)
(Representatives Kasper, Seibel, Weisz)

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to specialty pharmacy services; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Specialty pharmacy services and patient access to pharmaceuticals - Pharmacy benefits managers - Penalty.

1. As used in this section:
 - a. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.
 - b. "Plan sponsor" has the same meaning as in section 19-03.6-01.
 - c. "Specialty drug" means a prescription drug that:
 - (1) Is not available for order or purchase by a retail community pharmacy and long-term care pharmacy, regardless of whether the drug is meant to be self-administered; and
 - (2) Requires special storage and has distribution or inventory limitations not available at a retail community pharmacy or long-term care pharmacy.
 - d. "Third-party payer" has the same meaning as in section 19-03.6-01.
2. If requested by a plan sponsor contracted payer, a pharmacy benefits manager or third-party payer that has an ownership interest, either directly or through an affiliate or subsidiary, in a pharmacy shall disclose to the plan sponsor contracted payer any difference between the amount paid to a pharmacy and the amount charged to the plan sponsor contracted payer.
3. A pharmacy benefits manager or a pharmacy benefits manager's affiliates or subsidiaries may not own or have an ownership interest in a patient assistance program and a mail order specialty pharmacy, unless the pharmacy benefits manager, affiliate, or subsidiary agrees to not participate in a transaction that benefits the pharmacy benefits manager, affiliate, or subsidiary instead of another person owed a fiduciary duty.
4. A pharmacy benefits manager or third-party payer may not require pharmacy accreditation standards or recertification requirements to participate in a

network which are inconsistent with, more stringent than, or in addition to the federal and state requirements for licensure as a pharmacy in this state.

5. A licensed pharmacy or pharmacist may dispense any and all drugs allowed under that license.
6. A pharmacy benefits manager or other third-party payer that violates this section is guilty of a class B misdemeanor for each violation occurrence.

SECTION 2. APPLICATION. This Act applies to contracts and agreements in effect on and after the effective date of this Act.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 163

SENATE BILL NO. 2096

(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, 19-03.1-11, and 19-03.1-13 of the North Dakota Century Code, relating to the scheduling of controlled substances; and to declare an emergency.

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-piperidinyl]-N-phenylacetamide).~~
 - b. ~~Acetylfentanyl (also known as N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide).~~
 - e. Acetylmethadol.
 - d.b. Allylprodine.
 - e.c. Alphacetylmethadol.
 - f.d. Alphameprodine.
 - g.e. Alphamethadol.
 - h. ~~Alpha-methylfentanyl (also known as N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]-propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).~~
 - i. Alpha-methylthiofentanyl (also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
 - j.f. Benzethidine.

- k-g. Betacetylmethadol.
- ~~i.~~ ~~Beta-hydroxyfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).~~
- ~~m.~~ ~~Beta-hydroxy-3-methylfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).~~
- n-h. Betameprodine.
- ~~o-i.~~ Betamethadol.
- ~~p-j.~~ Betaprodine.
- q-k. Clonitazene.
- ~~r-l.~~ Dextromoramide.
- s-m. Diampromide.
- ~~t-n.~~ Diethylthiambutene.
- u-o. Difenoxin.
- ~~v-p.~~ Dimenoxadol.
- w-q. Dimepheptanol.
- ~~x-r.~~ Dimethylthiambutene.
- ~~y-s.~~ Dioxaphetyl butyrate.
- ~~z-t.~~ Dipipanone.
- aa-u. Ethylmethylthiambutene.
- ~~bb-v.~~ Etonitazene.
- ~~cc-w.~~ Etoxidine.
- ~~dd-x.~~ Furethidine.
- ~~ee-y.~~ Hydroxypethidine.
- ~~ff-z.~~ Ketobemidone.
- gg-aa. Levomoramide.
- ~~hh-bb.~~ Levophenacymorphan.
- ~~ii.~~ ~~3-Methylfentanyl (also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).~~
- ~~jj.~~ ~~3-Methylthiofentanyl (also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).~~

- ~~kk-cc.~~ Morpheridine.
- ~~ll-dd.~~ MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).
- ~~mm-ee.~~ Noracymethadol.
- ~~nn-ff.~~ Norlevorphanol.
- ~~oo-gg.~~ Normethadone.
- ~~pp-hh.~~ Norpipanone.
- ~~qq.~~ Para-fluorofentanyl (also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide).
- ~~rr-ii.~~ PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).
- ~~ss-jj.~~ Phenadoxone.
- ~~tt-kk.~~ Phenampromide.
- ~~uu-ll.~~ Phenomorphan.
- ~~vv-mm.~~ Phenoperidine.
- ~~ww-nn.~~ Piritramide.
- ~~xx-oo.~~ Proheptazine.
- ~~yy-pp.~~ Properidine.
- ~~zz-qq.~~ Propiram.
- ~~aaa-rr.~~ Racemoramide.
- ~~bbb.~~ Thiofentanyl (also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]propanamide).
- ~~eee-ss.~~ Tilidine.
- ~~ddd-tt.~~ Trimeperidine.
- uu. 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700).
- vv. 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (also known as MT-45).
- ww. 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (also known as AH-7921).
- xx. Fentanyl derivatives. Unless specifically excepted or unless listed in another schedule or are not FDA approved drugs, and are derived from N-(1-(2-Phenylethyl)-4-piperidinyl)-N-phenylpropanamide (Fentanyl) by any substitution on or replacement of the phenethyl group, any substitution on the piperidine ring, any substitution on or replacement of the propanamide

group, any substitution on the anilido phenyl group, or any combination of the above. Examples include:

- (1) N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide (also known as Acetyl-alpha-methylfentanyl).
 - (2) N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine (also known as Alpha-methylfentanyl).
 - (3) N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide (also known as Alpha-methylthiofentanyl).
 - (4) N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide (also known as Beta-hydroxyfentanyl).
 - (5) N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide (also known as Beta-hydroxy-3-methylfentanyl).
 - (6) N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide (also known as 3-Methylfentanyl).
 - (7) N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide (also known as 3-Methylthiofentanyl).
 - (8) N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide (also known as Para-fluorofentanyl).
 - (9) N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]propanamide (also known as Thiofentanyl).
 - (10) N-(1-phenylethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (also known as Furanyl Fentanyl).
 - (11) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide; N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (also known as Butyryl Fentanyl).
 - (12) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide; N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide (also known as Beta-Hydroxythiofentanyl).
 - (13) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (also known as Acetyl Fentanyl).
 - (14) N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]prop-2-enamide (also known as Acrylfentanyl).
 - (15) N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-pentanamide (also known as Valeryl Fentanyl).
4. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

-
- a. Acetorphine.
 - b. Acetyldihydrocodeine.
 - c. Benzylmorphine.
 - d. Codeine methylbromide.
 - e. Codeine-N-Oxide.
 - f. Cyprenorphine.
 - g. Desomorphine.
 - h. Dihydromorphine.
 - i. Drotebanol.
 - j. Etorphine (except hydrochloride salt).
 - k. Heroin.
 - l. Hydromorphinol.
 - m. Methyldesorphine.
 - n. Methyldihydromorphine.
 - o. Morphine methylbromide.
 - p. Morphine methylsulfonate.
 - q. Morphine-N-Oxide.
 - r. Myrophine.
 - s. Nicocodeine.
 - t. Nicomorphine.
 - u. Normorphine.
 - v. Pholcodine.
 - w. Thebacon.
5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):

- a. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as etryptamine; α -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
- b. Alpha-methyltryptamine.
- c. 4-methoxyamphetamine (also known as 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine; PMA).
- d. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy- α -methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
- e. Hashish.
- f. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).
- g. Lysergic acid diethylamide.
- h. Marijuana.
 - i. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro- 6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
 - j. Peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or its extracts).
- k. N-ethyl-3-piperidyl benzilate.
- l. N-methyl-3-piperidyl benzilate.
- m. Psilocybin.
- n. Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:
 - (1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-9-tetrahydrocannabinol.
 - (2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.
 - (3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

- o. Cannabinoids, synthetic. It includes the chemicals and chemical groups listed below, including their homologues, salts, isomers, and salts of isomers. The term "isomer" includes the optical, position, and geometric isomers.
- (1) Indole carboxaldehydes. Any compound structurally derived from 1H-indole-3-carboxaldehyde or 1H-2-carboxaldehyde substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranlylmethyl, benzyl, or halo benzyl group; and, at the hydrogen of the carboxaldehyde by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:
- (a) Substitution to the indole ring to any extent; or
- (b) Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent; or
- (c) A nitrogen heterocyclic analog of the indole ring; or
- (d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- (e) Examples include:
- [1] 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.
- [2] 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.
- [3] 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.
- [4] 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.
- [5] 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.
- [6] 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.
- [7] 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.
- [8] 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.
- [9] 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.
- [10] 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.

- [11] 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.
- [12] 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.
- [13] 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.
- [14] 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.
- [15] 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.
- [16] (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) - Other names: AM-694.
- [17] (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone - Other names: WIN 48,098 and Pravadoline.
- [18] (1-Pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone -- Other names: UR-144.
- [19] (1-(5-fluoropentyl)indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: XLR-11.
- [20] (1-(2-morpholin-4-ylethyl)-1H-indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: A-796,260.
- [21] (1-(5-fluoropentyl)-1H-indazol-3-yl)(naphthalen-1-yl)methanone -- Other names: THJ-2201.
- [22] 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone -- Other names: THJ-018.
- [23] (1-(5-fluoropentyl)-1H-benzo[d]imidazol-2-yl)(naphthalen-1-yl)methanone - Other names: FUBIMINA.
- [24] 1-[(N-methylpiperidin-2-yl)methyl]-3-(adamant-1-yl) indole - Other names: AM-1248.
- [25] 1-Pentyl-3-(1-adamantoyl)indole - Other names: AB-001 and JWH-018 adamantyl analog.
- (2) Indole carboxamides. Any compound structurally derived from 1H-indole-3-carboxamide or 1H-2-carboxamide substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:

- (a) Substitution to the indole ring to any extent; or
- (b) Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent; or
- (c) A nitrogen heterocyclic analog of the indole ring; or
- (d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- (e) Examples include:
- [1] N-Adamantyl-1-pentyl-1H-indole-3-carboxamide - Other names: JWH-018 adamantyl carboxamide, APICA, SDB-001, and 2NE1.
 - [2] N-Adamantyl-1-fluoropentylindole-3-carboxamide - Other names: STS-135.
 - [3] N-Adamantyl-1-pentyl-1H-Indazole-3-carboxamide - Other names: AKB 48 and APINACA.
 - [4] N-1-naphthalenyl-1-pentyl-1H-indole-3-carboxamide - Other names: NNE1 and MN-24.
 - [5] N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide - Other names: ADBICA.
 - [6] (S)-N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide - Other names: AB-PINACA.
 - [7] N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide - Other names: AB-FUBINACA.
 - [8] (S)-N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide - Other names: 5-Fluoro AB-PINACA.
 - [9] N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide - Other names: ADB-PINACA.
 - [10] N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide - Other names: AB-CHMINACA.
 - [11] N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide - Other names: ADB-FUBINACA.
 - [12] N-((3s,5s,7s)-adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide - Other names: FUB-AKB48 and AKB48 N-(4-fluorobenzyl) analog.
 - [13] 1-(5-fluoropentyl)-N-(quinolin-8-yl)-1H-indazole-3-carboxamide - Other names: 5-fluoro-THJ.

- [14] (S)-methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate - Other names: 5-fluoro AMB.
- [15] methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate - Other names: FUB-AMB.
- [16] N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1 H-indazole-3-carboxamide - Other names: MAB-CHMINACA and ADB-CHMINACA.
- [17] Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: 5F-ADB and 5F-MDMB-PINACA.
- [18] N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide - Other names: 5F-APINACA and 5F-AKB48.
- [19] Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate - Other names: MDMB-CHMICA and MMB-CHMINACA.
- [20] Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: MDMB-FUBINACA.
- (3) Indole carboxylic acids. Any compound structurally derived from 1H-indole-3-carboxylic acid or 1H-2-carboxylic acid substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the hydroxyl group of the carboxylic acid by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:
- Substitution to the indole ring to any extent; or
 - Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, propionaldehyde group to any extent; or
 - A nitrogen heterocyclic analog of the indole ring; or
 - A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- (e) Examples include:
- 1-(cyclohexylmethyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: BB-22 and QUCHIC.
 - naphthalen-1-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate - Other names: FDU-PB-22.
 - 1-pentyl-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: PB-22 and QUPIC.

- [4] 1-(5-Fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: 5-Fluoro PB-22 and 5F-PB-22.
- [5] quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate - Other names: FUB-PB-22.
- [6] naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate - Other names: NM2201.
- (4) Naphthylmethylindeles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:
- (a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane - Other names: JWH-175.
- (b) 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane - Other names: JWH-184.
- (5) Naphthoypyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307.
- (6) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.
- (7) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not substituted in the cyclohexyl ring to any extent. Examples include:
- (a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: CP 47,497.

- (b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: Cannabicyclohexanol and CP 47,497 C8 homologue.
- (c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol - Other names: CP 55,940.
- (8) Others specifically named:
- (a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210.
- (b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211.
- (c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone - Other names: WIN 55,212-2.
- (d) Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone - Other names: CB-13.
- p. Substituted phenethylamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from phenylethan-2-amine by substitution on the phenyl ring in any of the following ways, that is to say, by substitution with a fused methylenedioxy ring, fused furan ring, or fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems.
- (1) Whether or not the compound is further modified in any of the following ways, that is to say:
- (a) By substitution of phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups;
- (b) By substitution at the 2-position by any alkyl groups; or
- (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl, methylenedioxybenzyl, or methoxybenzyl groups.
- (2) Examples include:
- (a) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine).
- (b) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine).

- (c) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine).
- (d) 2-(2,5-Dimethoxyphenyl)ethanamine (also known as 2C-H or 2,5-Dimethoxyphenethylamine).
- (e) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine).
- (f) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine).
- (g) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine).
- (h) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine).
- (i) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine).
- (j) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine).
- (k) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine (also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine).
- (l) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine (also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine).
- (m) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane (also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine).
- (n) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine (also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine).
- (o) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-B-NBOMe; 2,5B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine).
- (p) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-I-NBOMe; 2,5I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine).
- (q) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine (also known as mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine).
- (r) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-C-NBOMe; 2,5C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine).

- (s) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine (also known as 2CB-5-hemiFLY).
 - (t) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine (also known as 2C-B-FLY).
 - (u) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyranof[2,3-g]chromen-5-yl)ethanamine (also known as 2C-B-butterFLY).
 - (v) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane (also known as 2C-B-FLY-NBOMe).
 - (w) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine (also known as bromo-benzodifuranyl-isopropylamine or bromo-dragonFLY).
 - (x) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine (also known as 2C-I-NBOH or 2,5I-NBOH).
 - (y) 5-(2-Aminopropyl)benzofuran (also known as 5-APB).
 - (z) 6-(2-Aminopropyl)benzofuran (also known as 6-APB).
 - (aa) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran (also known as 5-APDB).
 - (bb) 6-(2-Aminopropyl)-2,3,-dihydrobenzofuran (also known as 6-APDB).
 - (cc) 2,5-dimethoxy-amphetamine (also known as 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA).
 - (dd) 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
 - (ee) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).
 - (ff) 5-methoxy-3,4-methylenedioxy-amphetamine.
 - (gg) 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-a-methylphenethylamine; DOM and STP).
 - (hh) 3,4-methylenedioxy amphetamine (also known as MDA).
 - (ii) 3,4-methylenedioxymethamphetamine (also known as MDMA).
 - (jj) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA).
 - (kk) 3,4,5-trimethoxy amphetamine.
 - (ll) Mescaline (also known as 3,4,5-trimethoxyphenethylamine).
- q. Substituted tryptamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from 2-(1H-indol-3-yl)ethanamine (i.e.,

tryptamine) by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha-position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups. Examples include:

- (1) 5-methoxy-N,N-diallyltryptamine (also known as 5-MeO-DALT).
- (2) 4-acetoxy-N,N-dimethyltryptamine (also known as 4-AcO-DMT or O-Acetylpsilocin).
- (3) 4-hydroxy-N-methyl-N-ethyltryptamine (also known as 4-HO-MET).
- (4) 4-hydroxy-N,N-diisopropyltryptamine (also known as 4-HO-DIPT).
- (5) 5-methoxy-N-methyl-N-isopropyltryptamine (also known as 5-MeO-MiPT).
- (6) 5-methoxy-N,N-dimethyltryptamine (also known as 5-MeO-DMT).
- (7) Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
- (8) 5-methoxy-N,N-diisopropyltryptamine (also known as 5-MeO-DiPT).
- (9) Diethyltryptamine (also known as N,N-Diethyltryptamine; DET).
- (10) Dimethyltryptamine (also known as DMT).
- (11) Psilocyn.
 - r. 1-[3-(trifluoromethylphenyl)]piperazine (also known as TFMPP).
 - s. 1-[4-(trifluoromethylphenyl)]piperazine.
 - t. 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (also known as 5,6-Methylenedioxy-2-aminoindane or MDAI).
 - u. 2-(Ethylamino)-2-(3-methoxyphenyl)cyclohexanone (also known as Methoxetamine or MXE).
 - v. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).
 - w. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).
 - x. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl)cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TPCP, TCP).
 - y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).

- z. *Salvia divinorum*, salvinorin A, or any of the active ingredients of *salvia divinorum*.
6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- 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.
 - Substituted cathinones. Any compound, material, mixture, preparation, or other product, unless listed in another schedule or an approved food and drug administration drug (e.g., bupropion, pyrovalerone), structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
 - By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
 - By substitution at the 3-position with an acyclic alkyl substituent;
 - By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or
 - By inclusion of the 2-amino nitrogen atom in a cyclic structure.

Some trade or other names:

- 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone (also known as MDPPP).
- 3,4-Methylenedioxy-N-ethylcathinone (also known as Ethylone, MDEC, or bk-MDEA).

- (c) 3,4-Methylenedioxy-N-methylcathinone (also known as Methylenedioxymethylamphetamine or bk-MDMA).
- (d) 3,4-Methylenedioxypyrovalerone (also known as MDPV).
- (e) 3,4-Dimethylmethcathinone (also known as 3,4-DMMC).
- (f) 2-(methylamino)-1-phenylpentan-1-one (also known as Pentadrone).
- (g) 2-Fluoromethcathinone (also known as 2-FMC).
- (h) 3-Fluoromethcathinone (also known as 3-FMC).
- (i) 4-Methylethcathinone (also known as 4-MEC and 4-methyl-N-ethylcathinone).
- (j) 4-Fluoromethcathinone (also known as Flephedrone and 4-FMC).
- (k) 4-Methoxy-alpha-pyrrolidinopropiophenone (also known as MOPPP).
- (l) 4-Methoxymethcathinone (also known as Methedrone; bk-PMMA).
- (m) 4'-Methyl-alpha-pyrrolidinobutiophenone (also known as MPBP).
- (n) Alpha-methylamino-butyrophenone (also known as Buphedrone or MABP).
- (o) Alpha-pyrrolidinobutiophenone (also known as alpha-PBP).
- (p) Alpha-pyrrolidinopropiophenone (also known as alpha-PPP).
- (q) Alpha-pyrrolidinopentiophenone (also known as Alpha-pyrrolidinovalerophenone or alpha-PVP).
- (r) Beta-keto-N-methylbenzodioxolylbutanamine (also known as Butylone or bk-MBDB).
- (s) Ethcathinone (also known as N-Ethylcathinone).
- (t) 4-Methylmethcathinone (also known as Mephedrone or 4-MMC).
- (u) Methcathinone.
- (v) N,N-dimethylcathinone (also known as metamfepramone).
- (w) Naphthylpyrovalerone (naphyrone).
- (x) B-Keto-Methylbenzodioxolylpentanamine (also known as Pentylone).
- (y) 4-Methyl-alpha-pyrrolidinopropiophenone (also known as 4-MePPP and MPPP).

d. Fenethylamine.

- e. Fluoroamphetamine.
- f. Fluoromethamphetamine.
- g. (\pm)cis-4-methylaminorex (also known as (\pm)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
- h. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).
- i. N-ethylamphetamine.
- j. N, N-dimethylamphetamine (also known as N,N-alpha-trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine).

SECTION 2. 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, dextrorphan, 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, and ethers 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.

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- 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. Remifentanyl.
 - aa. Sufentanyl.
 - bb. Tapentadol.
 - cc. Thiafentanyl.
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 19-03.1-11 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).
 - c. 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers including Tramadol.
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. Alfaxalone.
 - c. Barbital.
 - d. Bromazepam.
 - e. Camazepam.
 - f. Carisoprodol.
 - g. Chloral betaine.
 - h. Chloral hydrate.
 - i. Chlordiazepoxide.
 - j. Clobazam.
 - k. Clonazepam.
 - l. Clorazepate.
 - m. Clotiazepam.
 - n. Cloxazolam.
 - o. Delorazepam.
 - p. Diazepam.
 - q. Dichloralphenazone.
 - r. Estazolam.
 - s. Ethchlorvynol.
 - t. Ethinamate.

- u. Ethyl loflazepate.
- v. Fludiazepam.
- w. Flunitrazepam.
- x. Flurazepam.
- x-y. Fospropofol.
- y-z. Halazepam.
- z-aa. Haloxazolam.
- aa-bb. Indiplon.
- bb-cc. Ketazolam.
- cc-dd. Loprazolam.
- dd-ee. Lorazepam.
- ee-ff. Lorcaserin.
- ff-gg. Lormetazepam.
- gg-hh. Mebutamate.
- hh-ii. Medazepam.
- ii-jj. Meprobamate.
- jj-kk. Methohexital.
- kk-ll. Methylphenobarbital (also known as mephobarbital).
- ll-mm. Midazolam.
- mm-nn. Nimetazepam.
- nn-oo. Nitrazepam.
- oo-pp. Nordiazepam.
- pp-qq. Oxazepam.
- qq-rr. Oxazolam.
- rr-ss. Paraldehyde.
- ss-tt. Petrichloral.
- tt-uu. Phenobarbital.
- uu-vv. Pinazepam.

~~ww-ww~~. Propofol.

~~ww-xx~~. Prazepam.

~~xx-yy~~. Quazepam.

~~yy-zz~~. Suvorexant.

~~zz-aaa~~. Temazepam.

~~aaa-bbb~~. Tetrazepam.

~~bbb-ccc~~. Triazolam.

~~eee-ddd~~. Zaleplon.

~~ddd-eee~~. Zolpidem.

~~eee-fff~~. 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:
 - a. Pentazocine, including its salts.
 - b. Butorphanol, including its optical isomers.
 - c. Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]](1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.
 - d. Epidiolex or its successor name as determined by the United States food and drug administration.
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 4. 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 any of the following narcotic drugs and their salts.
4. Narcotic drugs containing non-narcotic 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 non-narcotic 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, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible:
- a. Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (also referred to as BRV; UCB-34714; Briviact) (including its salts).
 - b. Ezogabine N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester.
 - b.c. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].
 - e.d. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].
6. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 164

HOUSE BILL NO. 1269

(Representatives Olson, M. Nelson)

AN ACT to create and enact a new subsection to section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing for aggravated assault; to amend and reenact subdivision k of subsection 3 of section 12.1-23-05, subsection 5 of section 12.1-32-01, subdivision b of subsection 1 of section 12.1-32-02.1, sections 19-03.1-22.3 and 19-03.1-23, subsection 2 of section 19-03.1-23.1, section 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, ingesting a controlled substance, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷¹ **SECTION 1. AMENDMENT.** Subdivision k of subsection 3 of section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

- k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.

SECTION 2. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, 23, or 78 of section 19-03.1-23.

SECTION 4. A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence

⁷¹ Section 12.1-23-05 was also amended by section 5 of House Bill No. 1041, chapter 108.

considered by the parole board.

⁷² **SECTION 5. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

⁷³ **SECTION 6. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for ~~anya~~ 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 ~~anya~~ person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. ~~AnyA~~ 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 AB felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least ~~five~~three years.
 - (2) For a third or subsequent offense, to imprisonment for ~~twenty~~ten years.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) For a second offense, to imprisonment for at least ~~three~~two years.
 - (2) For a third or subsequent offense, to imprisonment for ~~ten~~five years.
 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:

⁷² Section 19-03.1-22.3 was also amended by section 10 of House Bill No. 1041, chapter 108.

⁷³ Section 19-03.1-23 was also amended by section 12 of House Bill No. 1041, chapter 108, section 1 of House Bill No. 1341, chapter 165, and section 2 of House Bill No. 1341, chapter 165.

- (1) For a second offense, to imprisonment for at least ~~six~~three months.
 - (2) For a third offense, to imprisonment for at least ~~one year~~six months.
 - (3) For a fourth or subsequent offense, to imprisonment for ~~five~~three years.
- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsections 1 and 4.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. ~~A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.~~
 - b. ~~Any other~~A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - e.b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d.c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
- 3-4. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
- a. ~~Any~~A person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to ~~an eight-year~~a four-year term of imprisonment.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least ~~eight~~four years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
- 4-5. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or

deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:

- a. For a second or subsequent offense, to imprisonment for at least five years.
- b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

5. A

6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 34, and 45. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

~~6.7.~~ It is unlawful for a person to willfully, as defined in section 12.1-02-02:

- a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

~~7.8.~~ a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony.

c. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves one ounce [28.35 grams] or less of marijuana. ~~Any~~

d. A person who violates this subsection regarding possession of one ounce [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.

e. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled

substance or controlled substance analog is guilty of a class A misdemeanor.

- 8-9. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation. A court shall order a person who violates subdivision e of subsection 8 to undergo the drug addiction evaluation.
- 9-10. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

⁷⁴ **SECTION 7. AMENDMENT.** Subsection 2 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

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.
 - e-b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
 - d-c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

SECTION 8. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection ~~7~~⁸ of section 19-03.1-23, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual contacted law enforcement or emergency medical services and reported that the individual was or that seeks medical assistance for another individual was in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with emergency medical services and law enforcement personnel in the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in need of emergency medical services. The maximum number of individuals that may be immune for any one occurrence is three individuals a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a

⁷⁴ Section 19-03.1-23.1 was also amended by section 13 of House Bill No. 1041, chapter 108, section 1 of House Bill No. 1270, chapter 167, and section 3 of House Bill No. 1341, chapter 165.

drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section is not applicable for a violation under section 19-03.1-23.1 does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.

SECTION 9. AMENDMENT. Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection ~~78~~ of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

SECTION 10. AMENDMENT. Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection ~~67~~ of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

SECTION 11. AMENDMENT. Subsection 1 of section 19-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person has pled guilty or has been found guilty of a felony violation of subsection ~~78~~ of section 19-03.1-23, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, the court shall impose a period of probation up to the length authorized under section 12.1-32-06.1 with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.

SECTION 12. AMENDMENT. Subsection 29 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than ~~one-half one~~ ounce [44.175~~28.35~~ grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection ~~910~~ of section 19-03.1-23.

Approved April 21, 2017

Filed April 21, 2017

CHAPTER 165

HOUSE BILL NO. 1341

(Representative Rick C. Becker)

AN ACT to amend and reenact subsections 3 and 7 of section 19-03.1-23 and subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to the elimination of enhanced penalties for manufacturing, delivering, or possessing controlled substances near schools; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁵ **SECTION 1. AMENDMENT.** Subsection 3 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

3. a. For second or subsequent ~~offenders~~offenses, in addition to any other penalty imposed under this section, if the person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the person is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
 - a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to an eight-year term of imprisonment.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to a term of imprisonment ~~for~~ at least eight~~four~~ years which is to run consecutively to any other sentence imposed.
 - b. It is not a defense that the defendant did not know the age of a person protected under this subdivision a.
 - c. The penalty in subdivision a does not apply to a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana.

⁷⁵ Section 19-03.1-23 was also amended by section 12 of House Bill No. 1041, chapter 108, section 6 of House Bill No. 1269, chapter 164, and section 2 of House Bill No. 1341, chapter 165.

⁷⁶ **SECTION 2. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for a first offense under this subsection and a class C felony for a second or subsequent offense under this subsection. If, at the time of the offense the person is in or on, ~~or within one thousand feet [300.48 meters]~~ of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves ~~one ounce [28.35 grams] or less of marijuana~~. Any person who violates this subsection regarding possession of ~~one ounce [28.35 grams] or less of marijuana~~ is guilty of a class B misdemeanor.

⁷⁷ **SECTION 3. 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 was committed during a school sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in ~~or, on, or within one thousand feet [300.48 meters]~~three hundred feet [91.4 meters] of, the real property comprising a ~~child-care or preschool facility, a public or private elementary or secondary school, or a public career and technical education school, or a public or private college or university;~~
 - b. ~~The~~the defendant was at least ~~sixteen~~twenty-one years of age at the time of the offense, and the offense involved the delivery of a controlled substance to a minor;
 - e-b. 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:

⁷⁶ Section 19-03.1-23 was also amended by section 12 of House Bill No. 1041, chapter 108, section 6 of House Bill No. 1269, chapter 164, and section 1 of House Bill No. 1341, chapter 165.

⁷⁷ Section 19-03.1-23.1 was also amended by section 13 of House Bill No. 1041, chapter 108, section 7 of House Bill No. 1269, chapter 164, and section 1 of House Bill No. 1270, chapter 167.

- (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
- (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
 - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
 - (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
 - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
 - (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
 - (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
 - (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-c. The defendant had a firearm in the defendant's actual possession at the time of the offense.

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 166

SENATE BILL NO. 2320

(Senators Anderson, J. Lee, Mathern)
(Representatives J. Nelson, Seibel, Weisz)

AN ACT to create and enact a new subsection to section 19-03.4-02 and a new section to chapter 23-01 of the North Dakota Century Code, relating to drug paraphernalia guidelines and a syringe exchange program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 19-03.4-02 of the North Dakota Century Code is created and enacted as follows:

Whether the object is a needle or syringe collected during the operation of a needle exchange program under chapter 23-01 to aid in the prevention of bloodborne diseases.

SECTION 2. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Syringe or needle exchange program - Authorization.

1. As used in this section:
 - a. "Program" means a syringe exchange program operated under this section.
 - b. "Qualified entity" means:
 - (1) A local health department;
 - (2) A city that operates a program within the boundaries of the city; or
 - (3) An organization that has been authorized to operate a program by the state department of health, the board of county commissioners, or the governing body for the operation of a program within the boundaries of the city.
2. The state department of health may authorize a qualified entity to operate a program in a county if:
 - a. The area to be served is at risk of an increase or potential increase in prevalence of viral hepatitis or human immunodeficiency virus;
 - b. A syringe exchange program is medically appropriate as part of a comprehensive public health response; and
 - c. The qualified entity conducted a public hearing and submitted a report of the findings and an administration plan for the program to the state health officer.
3. A qualified entity operating a program under this chapter shall:

- a. Register the program annually in the manner prescribed by the state department of health;
 - b. Have a pharmacist, physician, or advanced practice registered nurse who is licensed in the state to provide oversight for the program;
 - c. Store and dispose of all syringes and needles collected in a safe and legal manner;
 - d. Provide education and training on drug overdose response and treatment, including the administration of an overdose reversal medication;
 - e. Provide education, referral, and linkage to human immunodeficiency virus, viral hepatitis, and sexually transmitted disease prevention, treatment, and care services;
 - f. Provide drug addiction treatment information, and referrals to drug treatment programs, including programs in the local area and programs that offer medication-assisted treatment that includes a federal food and drug administration approved long-acting, non-addictive medication for the treatment of opioid or alcohol dependence;
 - g. Provide syringe, needle, and injection supply distribution and collection without collecting or recording personally identifiable information;
 - h. Operate in a manner consistent with public health and safety; and
 - i. Ensure the program is medically appropriate and part of a comprehensive public health response.
4. The state department of health may terminate a program for failure to comply with any of the provisions in this section.
 5. A state agency may not provide general fund monies to a program to purchase or otherwise acquire hypodermic syringes, needles, or injection supplies for a program under this section.
 6. A law enforcement officer may not stop, search, or seize an individual based on the individual's participation in a program under this section. Syringes and needles appropriately collected under this section are not considered drug paraphernalia as provided in chapter 19-03.4.
 7. Each program shall file a semiannual report with the state department of health containing the following information listed on a daily basis and by location, identified by the postal zip code, where the program distributed and collected syringes and needles:
 - a. The number of individuals served;
 - b. The number of syringes and needles collected;
 - c. The number of syringes and needles distributed; and
 - d. Any additional information requested by the state department of health.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 167**HOUSE BILL NO. 1270**

(Representative Olson)

AN ACT to amend and reenact paragraph 3 of subdivision c of subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to aggravating factors in drug offenses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁸ **SECTION 1. AMENDMENT.** Paragraph 3 of subdivision c of subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

- (3) ~~Five~~Twenty-eight grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;

Approved March 13, 2017

Filed March 13, 2017

⁷⁸ Section 19-03.1-23.1 was also amended by section 13 of House Bill No. 1041, chapter 108, section 7 of House Bill No. 1269, chapter 164, and section 3 of House Bill No. 1341, chapter 165.

CHAPTER 168**HOUSE BILL NO. 1099**

(Judiciary Committee)

(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact subsection 3 of section 19-03.5-01 of the North Dakota Century Code, relating to the definition of controlled substance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 19-03.5-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Controlled substance" means a drug, substance, or immediate precursor defined in section 19-03.1-01 and nonscheduled substances containing ~~tramadol or carisoprodol~~ gabapentin.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 169

SENATE BILL NO. 2262

(Senators Wanzek, Klein, Dotzenrod)
(Representatives Headland, D. Johnson, Trottier)

AN ACT to create and enact a new section to chapter 19-20.1 of the North Dakota Century Code, relating to fertilizer regulation by cities, counties, or townships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-20.1 of the North Dakota Century Code is created and enacted as follows:

Fertilizer regulation and use - Preemption - Prohibition.

Except as otherwise provided in this chapter, a city, county, or township may not enact new ordinances or resolutions regulating or prohibiting the registration, labeling, distribution, sale, handling, use, or application of fertilizer. This section does not preempt or otherwise limit the authority of a city, county, or township to adopt and enforce fire codes or hazardous waste disposal restrictions.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 170

SENATE BILL NO. 2154

(Senators Wardner, Heckaman)
(Representatives Carlson, Mock)

AN ACT to provide for suspension of certain provisions of the North Dakota Compassionate Care Act; to provide a contingent expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. SUSPENSION. Provisions of chapter 19-24, the North Dakota Compassionate Care Act, relating to issuance of applications by the state department of health, receipt by the department of applications for registration, and the duty of the department to issue certificates of registration are suspended.

SECTION 2. CONTINGENT EXPIRATION DATE. Section 1 of this Act is effective through July 31, 2017, or the effective date of legislation enacted by the sixty-fifth legislative assembly authorizing the prescription, dispensing, growth, and use of medical marijuana, whichever occurs first.

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

Approved January 26, 2017

Filed January 26, 2017

CHAPTER 171

SENATE BILL NO. 2344

(Senators Wardner, Heckaman)

(Representatives Carlson, Mock)

(Approved by the Delayed Bills Committee)

AN ACT to create and enact chapter 19-24.1 of the North Dakota Century Code, relating to medical marijuana; to amend and reenact section 54-60-03, paragraph 3 of subdivision a of subsection 15 of section 57-02-08, and paragraph 2 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to primary sector business certification and property tax exemptions for farm buildings and residences; to repeal chapter 19-24 of the North Dakota Century Code, relating to medical marijuana; to provide a statement of legislative intent; to provide for a report; to provide a penalty; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 19-24.1 of the North Dakota Century Code is created and enacted as follows:

19-24.1-01. Definitions.

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

1. "Advanced practice registered nurse" means an advanced practice registered nurse defined under section 43-12.1-02.
2. "Allowable amount of usable marijuana" means the amount of usable marijuana a registered qualifying patient or registered designated caregiver may purchase in a thirty-day period under this chapter.
 - a. During a thirty-day period, a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than two and one-half ounces [70.87 grams] of dried leaves or flowers of the plant of genus cannabis in a combustible delivery form. At any time a registered qualifying patient, or a registered designated caregiver on behalf of a registered qualifying patient, may not possess more than three ounces [85.05 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.
 - b. A registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than the maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period. The maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period for a cannabinoid concentrate or medical cannabinoid product, or the cumulative total of both, is two thousand milligrams.
3. "Bona fide provider-patient relationship" means a treatment or counseling relationship between a health care provider and patient in which all the following are present:

- a. The health care provider has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.
 - b. The health care provider has created and maintained records of the patient's condition in accordance with medically accepted standards.
 - c. The patient is under the health care provider's continued care for the debilitating medical condition that qualifies the patient for the medical use of marijuana.
 - d. The health care provider has a reasonable expectation that provider will continue to provide followup care to the patient to monitor the medical use of marijuana as a treatment of the patient's debilitating medical condition.
 - e. The relationship is not for the sole purpose of providing written certification for the medical use of marijuana.
4. "Cannabinoid" means a chemical compound that is one of the active constituents of marijuana.
 5. "Cannabinoid capsule" means a small, soluble container, usually made of gelatin, which encloses a dose of a cannabinoid product or a cannabinoid concentrate intended for consumption. The maximum concentration of amount of tetrahydrocannabinol permitted in a serving of a cannabinoid capsule is fifty milligrams.
 6. "Cannabinoid concentrate" means a concentrate or extract obtained by separating cannabinoids from marijuana by a mechanical, chemical, or other process.
 7. "Cannabinoid edible product" means a food or potable liquid into which a cannabinoid concentrate or the dried leaves or flowers of the plant of the genus cannabis is incorporated.
 8. "Cannabinoid tincture" means a solution of alcohol, cannabinoid concentrate, and other ingredients intended for consumption.
 9. "Cannabinoid topical" means a cannabinoid product intended to be applied to the skin or hair. The maximum concentration or amount of tetrahydrocannabinol permitted in a cannabinoid topical is six percent.
 10. "Cannabinoid transdermal patch" means an adhesive substance applied to the skin which contains a cannabinoid product or cannabinoid concentrate for absorption into the bloodstream. The maximum concentration or amount of tetrahydrocannabinol permitted in a serving of a cannabinoid transdermal patch is fifty milligrams.
 11. "Cardholder" means a qualifying patient, designated caregiver, or compassion center agent who has been issued and possesses a valid registry identification card.
 12. "Compassion center" means a manufacturing facility or dispensary.

13. "Compassion center agent" means a principal officer, board member, member, manager, governor, employee, volunteer, or agent of a compassion center.
14. "Contaminated" means made impure or inferior by extraneous substances.
15. "Debilitating medical condition" means one of the following:
 - a. Cancer;
 - b. Positive status for human immunodeficiency virus;
 - c. Acquired immune deficiency syndrome;
 - d. Decompensated cirrhosis caused by hepatitis C;
 - e. Amyotrophic lateral sclerosis;
 - f. Posttraumatic stress disorder;
 - g. Agitation of Alzheimer's disease or related dementia;
 - h. Crohn's disease;
 - i. Fibromyalgia;
 - j. Spinal stenosis or chronic back pain, including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;
 - k. Glaucoma;
 - l. Epilepsy;
 - m. A terminal illness; and
 - n. A chronic or debilitating disease or medical condition or treatment for such disease or medical condition that produces one or more of the following:
 - (1) Cachexia or wasting syndrome;
 - (2) Severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects;
 - (3) Intractable nausea;
 - (4) Seizures; or
 - (5) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis.
16. "Department" means the state department of health.

17. "Designated caregiver" means an individual who agrees to manage the well-being of a registered qualifying patient with respect to the qualifying patient's medical use of marijuana.
18. "Dispensary" means an entity registered by the department as a compassion center authorized to dispense usable marijuana to a registered qualifying patient and a registered designated caregiver.
19. "Enclosed, locked facility" means a closet, room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access limited to individuals authorized under this chapter or rules adopted under this chapter.
20. "Health care provider" means a physician or an advanced practice registered nurse.
21. "Manufacturing facility" means an entity registered by the department as a compassion center authorized to produce and process and to sell usable marijuana to a dispensary.
22. "Marijuana" means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant.
23. "Maximum concentration or amount of tetrahydrocannabinol" means the total amount of tetrahydrocannabinol and tetrahydrocannabinolic acid in a medical cannabinoid product or a cannabinoid concentrate.
24. "Medical cannabinoid product" means a product intended for human consumption or use which contains cannabinoids.
 - a. Medical cannabinoid products are limited to the following forms:
 - (1) Cannabinoid tincture;
 - (2) Cannabinoid capsule;
 - (3) Cannabinoid transdermal patch; and
 - (4) Cannabinoid topical.
 - b. "Medical cannabinoid product" does not include:
 - (1) A cannabinoid edible product;
 - (2) A cannabinoid concentrate by itself; or
 - (3) The dried leaves or flowers of the plant of the genus cannabis by itself.
25. "Medical marijuana product" means a cannabinoid concentrate or a medical cannabinoid product.
26. "Medical marijuana waste" means unused, surplus, returned, or out-of-date usable marijuana; recalled usable marijuana; unused marijuana; or plant

- debris of the plant of the genus cannabis, including dead plants and all unused plant parts and roots.
27. "Medical use of marijuana" means the acquisition, use, and possession of usable marijuana to treat or alleviate a qualifying patient's debilitating medical condition.
 28. "Minor" means an individual under the age of nineteen.
 29. "North Dakota identification" means a North Dakota driver's license or comparable state of North Dakota or federal issued photo identification card verifying North Dakota residence.
 30. "Pediatric medical marijuana" means a medical marijuana product containing cannabidiol which may not contain a maximum concentration or amount of tetrahydrocannabinol of more than six percent.
 31. "Physician" means a physician licensed under chapter 43-17 to practice medicine in the state of North Dakota.
 32. "Posttraumatic stress disorder" means a patient meets the diagnostic criteria for posttraumatic stress disorder under the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fifth edition, text revision (2013).
 33. "Processing" or "process" means the compounding or conversion of marijuana into a medical marijuana product.
 34. "Producing", "produce", or "production" mean the planting, cultivating, growing, trimming, or harvesting of the plant of the genus cannabis or the drying of the leaves or flowers of the plant of the genus cannabis.
 35. "Qualifying patient" means an individual who has been diagnosed by a health care provider as having a debilitating medical condition.
 36. "Registry identification card" means a document issued by the department which identifies an individual as a registered qualifying patient, registered designated caregiver, or registered compassion center agent.
 37. "Terminal illness" means a disease, illness, or condition of a patient:
 - a. For which there is not a reasonable medical expectation of recovery;
 - b. Which as a medical probability, will result in the death of the patient, regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes; and
 - c. As a result of which, the patient's health care provider would not be surprised if death were to occur within six months.
 38. "Usable marijuana" means a medical marijuana product or the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form. However, the term does not include the dried leaves or flowers unless authorized through a written certification and does not include a cannabinoid

edible product. In the case of a registered qualifying patient who is a minor, "usable marijuana" is limited to pediatric medical marijuana.

39. "Verification system" means the system maintained by the department under section 19-24.1-31 for verification of registry identification cards.
40. "Written certification" means a form established by the department which is executed, dated, and signed by a health care provider within ninety calendar days of the date of application, stating that in the health care provider's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. A health care provider may authorize the use of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form to treat or alleviate the patient's debilitating medical condition. A written certification may not be made except in the course of a bona fide provider-patient relationship.

19-24.1-02. Medical marijuana program.

The department shall establish and implement a medical marijuana program under this chapter to allow for production and processing, the sale and dispensing of usable marijuana, and medical use of marijuana. A person may not produce or process or sell, possess, transport, dispense, or use marijuana or usable marijuana under the medical marijuana program unless the person is authorized to do so as a compassion center, a cardholder, or otherwise authorized by rule adopted under this chapter.

19-24.1-03. Qualifying patients - Registration.

1. A qualifying patient is not eligible to purchase, use, or possess usable marijuana under the medical marijuana program unless the qualifying patient has a valid registry identification card.
2. A qualifying patient application for a registry identification card is complete and eligible for review if an applicant submits to the department:
 - a. A nonrefundable annual application fee in the amount of fifty dollars, with a personal check or cashier's check payable to "North Dakota State Department of Health, Medical Marijuana Program".
 - b. An original written certification, which must include:
 - (1) The name, address, and telephone number of the practice location of the applicant's health care provider;
 - (2) The health care provider's North Dakota license number;
 - (3) The health care provider's medical or nursing specialty;
 - (4) The applicant's name and date of birth;
 - (5) The applicant's debilitating medical condition and the medical justification for the health care provider's certification of the patient's debilitating medical condition;

- (6) Attestation the written certification is made in the course of a bona fide provider-patient relationship and that in the provider's professional opinion the applicant is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the applicant's debilitating medical condition;
 - (7) Whether the health care provider authorizes the patient to use the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form; and
 - (8) The health care provider's signature and the date.
 - c. An original qualifying patient application for a registry identification card form established by the department which must include all of the following:
 - (1) The applicant's name, address, and date of birth.
 - (2) The applicant's social security number.
 - (3) The name, address, and date of birth of the applicant's proposed designated caregiver, if any.
 - (4) A photographic copy of the applicant's North Dakota identification. The North Dakota identification must be available for inspection and verification upon request of the department. If the applicant is a minor, a certificated copy of a birth record is required.
 - (5) The applicant's or guardian's signature and the date, or in the case of a minor, the signature of the minor's parent or legal guardian with responsibility for health care decisions and the date.
 - d. A signed consent for release of medical information related to the applicant's debilitating medical condition, on a form provided by the department.
 - e. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the applicant.
 - f. Any other information or material required by rule adopted under this chapter.
- 3. If the applicant is unable to submit the required application information due to age or medical condition, the individual responsible for making medical decisions for the applicant may submit the application on behalf of the applicant. The individual responsible for making medical decisions:
 - a. Must be identified on the qualifying patient application for a registry identification card; and
 - b. Shall provide a copy of the individual's North Dakota identification. The North Dakota identification must be available for inspection and verification upon the request of the department.
- 4. If the applicant is a minor, the department may waive the application or renewal fee if:

- a. The parent or legal guardian of the applicant is the applicant's registered designated caregiver; and
- b. The applicant resides with the applicant's registered designated caregiver.

19-24.1-04. Designated caregivers - Registration.

1. A designated caregiver is not eligible to purchase, assist in the use of, or possess usable marijuana under the medical marijuana program unless the designated caregiver has a valid registry identification card.
2. A designated caregiver application is complete and eligible for review if an applicant submits to the department all of the following:
 - a. A nonrefundable annual application fee in the amount of fifty dollars, with a personal check or cashier's check made payable to "North Dakota State Department of Health, Medical Marijuana Program".
 - b. An original designated caregiver application for a registry identification card form established by the department which must include all of the following:
 - (1) A certified copy of a birth record verifying the applicant is at least twenty-one years of age.
 - (2) A photographic copy of the applicant's North Dakota identification. The North Dakota identification must be available for inspection and verification upon request of the department.
 - (3) The name, address, telephone number, and date of birth of the qualifying patient.
 - (4) The name, address, and telephone number for the qualifying patient's health care provider.
 - (5) The name, address, and telephone number of the applicant.
 - (6) The applicant's social security number.
 - (7) The applicant's signature and the date.
 - c. An original designated caregiver authorization form established by the department which must be executed by a registered qualifying patient providing the designated caregiver applicant with the responsibility of managing the well-being of the registered qualifying patient with respect to the registered qualifying patient's medical use of marijuana. The form must include:
 - (1) The name and date of birth of the designated caregiver applicant; and
 - (2) The registered qualifying patient's signature and the date.
- d. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the applicant.
- e. Any other information or material required by the department by rule.

3. A criminal history record check conducted under section 12-60-24 must be performed upon initial application and biennially thereafter and at any other time upon the request of the department. All fees associated with the criminal history record check must be paid by the applicant.
4. An individual convicted of a drug-related misdemeanor offense within the five years preceding the date of application or of a felony offense is prohibited from serving as a designated caregiver.
5. An applicant shall submit a separate and complete application for each of the applicant's registered qualifying patients. A registered designated caregiver may assist no more than five registered qualifying patients. A registered designated caregiver who is a registered qualifying patient may assist no more than four additional registered qualifying patients.
6. A registered designated caregiver may not purchase or possess more than the allowable amount of usable marijuana for each of the registered designated caregiver's registered qualifying patients and for the registered designated caregiver if the caregiver is a registered qualifying patient.

19-24.1-05. Qualifying patients and designated caregivers - Identification cards - Issuance and denial.

1. Upon receipt of a complete application for or renewal of a qualifying patient or designated caregiver registry identification card, the department shall verify the submitted information.
2. The verification methods used by the department on an application or renewal and accompanying documentation may include:
 - a. Contacting an applicant by telephone or mail, or if proof of identity is uncertain, the department shall require a face-to-face meeting and the production of additional identification materials;
 - b. Contacting the North Dakota board of medicine or North Dakota board of nursing to verify the certifying health care provider is licensed in the state and is in good standing; and
 - c. Contacting the health care provider to obtain additional documentation verifying the qualifying patient applicant's medical diagnosis and medical condition qualify the applicant for participation in the medical marijuana program.
3. Upon verification of the information contained in an application or renewal, the department shall approve or deny the application or renewal.
4. Except as provided in subsection 5, the department shall issue a registry identification card within thirty calendar days of approving an application or renewal. A designated caregiver must have a registry identification card for each of the designated caregiver's registered qualifying patients.
5. The department may not issue a registry identification card to a qualifying patient who is a minor unless:
 - a. The department receives documentation the minor's health care provider has explained to the parent or legal guardian with responsibility for health

- care decisions for the minor the potential risks and benefits of the use of pediatric medical marijuana to treat or alleviate the debilitating medical condition; and
- b. The department receives documentation the parent or legal guardian with responsibility for health care decisions for the minor consents in writing to:
- (1) Allow the minor's use of pediatric medical marijuana to treat or alleviate the debilitating medical condition;
 - (2) Serve as the minor's designated caregiver or identifies a registered designated caregiver to act as the minor's designated caregiver;
 - (3) Control the acquisition of usable marijuana and control the dosage and frequency of the use of usable marijuana by the minor; and
 - (4) If serving as the minor's designated caregiver, prevent the minor from accessing the usable marijuana by storing the usable marijuana in an enclosed, locked facility.
6. If the department denies an application or renewal, the applicant may not reapply for one year from the date of the denial, unless otherwise authorized by the department, and the applicant is prohibited from all lawful privileges provided under this chapter.
7. The department shall deny an application for or renewal of a qualifying patient's registry identification card if the applicant:
- a. Does not meet the requirements of this section or section 19-24.1-03;
 - b. Did not provide the required information and materials;
 - c. Previously had a registry identification card revoked; or
 - d. Provided false or falsified information or made a material misstatement.
8. The department shall deny an application for or renewal of a designated caregiver registry identification card if the designated caregiver applicant:
- a. Does not meet the requirements of this section or section 19-24.1-04;
 - b. Did not provide the required information and materials;
 - c. Previously had a registry identification card revoked; or
 - d. Provided false or falsified information or made a material misstatement.
9. The department shall notify, in writing, the qualifying patient or designated caregiver applicant of the reason for denying an application or renewal.
10. The department shall notify the following in writing:
- a. A registered qualifying patient if that patient's designated caregiver's application or renewal is denied; and

b. A registered designated caregiver if that caregiver's qualifying patient's application or renewal is denied.

11. The cardholder may appeal a denial or revocation of a registry identification card to the district court of Burleigh County for hearing. The court may authorize the cardholder to appear by reliable electronic means.

19-24.1-06. Registry identification cards - Renewal.

To prevent interruption of possession of a valid registry identification card, a registered qualifying patient or registered designated caregiver shall apply for a registry identification card renewal by submitting a complete reapplication as provided under section 19-24.1-03 or 19-24.1-04 no less than forty-five calendar days before the expiration date of the existing registry identification card.

19-24.1-07. Registry identification cards - Nontransferable.

A registry identification card is not transferable, by assignment or otherwise, to another person. If a person attempts to transfer a card in violation of this section, the registry identification card is void and the person is prohibited from all privileges provided under this chapter.

19-24.1-08. Qualifying patients and designated caregivers - Voluntary withdrawal.

A registered qualifying patient or registered designated caregiver may voluntarily withdraw from participation in the medical marijuana program. A registered qualifying patient or registered designated caregiver seeking to withdraw from the medical marijuana program shall notify the department in writing no less than thirty calendar days before withdrawal.

19-24.1-09. Cardholders - Eligibility and compliance.

1. A cardholder shall provide the department or the department's designee immediate access to any material and information necessary for determining eligibility and compliance with this chapter.
2. Failure of a cardholder to provide the department access to the material, or information as provided under this chapter may result in the department taking action, which may include the revocation of the cardholder registry identification card and referral to state or local law enforcement.
3. Failure of a cardholder to comply with the requirements under this section which is documented by the department, may result in sanctions, including suspension, revocation, nonrenewal, or denial of registration, and referral to state or local law enforcement.
4. The department shall refer credible criminal complaints against a cardholder to appropriate state or local law enforcement authorities.
5.
 - a. If a violation of the requirements under this section is cited as a result of compliance monitoring, the department shall provide the cardholder with written notice of the findings following the compliance monitoring visit.
 - b. Unless otherwise specified by the department, the cardholder shall correct the violation within five calendar days of receipt of the notice citing the violation.

- c. The department shall verify whether the cardholder corrected the violation.
- d. The violation is not deemed corrected until the department provides written verification the corrective action is satisfactory.
- e. If the violation is not corrected within the required time, the department may revoke the registry identification card of the cardholder.

19-24.1-10. Cardholders - Notification of change.

1. Within ten calendar days of the change, in a manner prescribed by the department, a registered qualifying patient or registered designated caregiver shall notify the department of any of the following:
 - a. A change in the cardholder's name or address;
 - b. Knowledge of a change that would render the registered qualifying patient no longer eligible to participate in the medical marijuana program;
 - c. Knowledge of a change that results in the registered qualifying patient's health care provider no longer meeting the definition of the term "health care provider" as defined under section 19-24.1-01; or
 - d. Knowledge of a change that renders the registered qualifying patient's registered designated caregiver no longer eligible to participate in the medical marijuana program.
2. If a registered qualifying patient seeks to change the patient's designated caregiver, the registered qualifying patient shall notify the department in writing of this change.
3. If a cardholder loses the cardholder's registry identification card, the cardholder shall notify the department in writing within twenty-four hours of becoming aware of the loss.
4. If a registered qualifying patient is unable to make a notification required under this section due to age or medical condition, that patient's registered designated caregiver or the individual responsible for making medical decisions for that patient shall provide the notification.
5. If the department receives notification of an item listed in this section and the nature of the item reported does not affect a cardholder's eligibility, the department shall issue the cardholder a new registry identification card with a new random ten-digit alphanumeric identification number within twenty calendar days of approving the updated information and the cardholder shall pay a fee, not to exceed twenty-five dollars. If a cardholder notifying the department is a registered qualifying patient who has a registered designated caregiver, the department shall issue the patient's registered designated caregiver a new registry identification card within twenty calendar days of approving the updated information.
6. If the department receives notification of an item listed in this section and the nature of the item reported makes the cardholder ineligible, the cardholder's registry identification card becomes void immediately upon notification of the department and the registered cardholder shall dispose of any usable

marijuana in the cardholder's possession within fifteen calendar days, in accordance with rules adopted under this chapter.

7. A registered qualifying patient's certifying health care provider shall notify the department in writing if the health care provider's registered qualifying patient no longer has a debilitating medical condition or if the health care provider no longer believes the patient will receive therapeutic or palliative benefit from the medical use of marijuana. The qualifying patient's registry identification card becomes void immediately upon the health care provider's notification of the department and the registered qualifying patient shall dispose of any usable marijuana in the cardholder's possession within fifteen calendar days, in accordance with rules adopted under this chapter.

19-24.1-11. Registry identification cards.

1. The contents of a registry identification card must include:
 - a. The name of the cardholder;
 - b. A designation as to whether the cardholder is a qualifying patient, designated caregiver, or compassion center agent;
 - c. A designation as to whether a qualifying patient is a minor;
 - d. A designation as to whether a qualifying patient or a designated caregiver's qualifying patient is authorized to use the dried leaves or flowers of the plant of the genus cannabis;
 - e. The date of issuance and expiration date;
 - f. A random ten-digit alphanumeric identification number containing at least four numbers and at least four letters which is unique to the cardholder;
 - g. If the cardholder is a designated caregiver, the random identification number of the qualifying patient the designated caregiver is authorized to assist;
 - h. A photograph of the cardholder; and
 - i. The phone number or website address at which the card can be verified.
2. Except as otherwise provided in this section or rule adopted under this chapter, a registry identification card expiration date must be one year after the date of issuance.
3. If a health care provider states in the written certification that the qualifying patient would benefit from the medical use of marijuana until a specified date, less than one year, the registry identification card expires on that date.

19-24.1-12. Compassion centers.

1. A person may not process or produce or dispense usable marijuana or otherwise act as a compassion center in this state unless the person is registered as a compassion center.

2. Except as otherwise provided under this section, the department shall register no more than:
 - a. Two compassion centers with the sole purpose of operating as a manufacturing facility; and
 - b. Eight compassion centers with the sole purpose of operating as a dispensary.
3. The department shall establish an open application period for the submission of compassion center applications. At the completion of the open application period, the department shall review each complete application using a competitive process established in accordance with rules adopted under this chapter and shall determine which applicants to register as compassion centers.
4. The department may register additional compassion centers if the department determines additional compassion centers are necessary to increase access to usable marijuana by registered qualifying patients and registered designated caregivers.
5. If the department revokes or does not renew a compassion center registration certificate, the department may establish an open application period for the submission of compassion center applications.
6. The department of commerce may not certify a compassion center as a primary sector business.

19-24.1-13. Compassion centers - Authority.

1. The activities of a manufacturing facility are limited to producing and processing and to related activities, including acquiring, possessing, storing, transferring, and transporting marijuana and usable marijuana, for the sole purpose of selling usable marijuana to a dispensary.
2. The activities of a dispensary are limited to purchasing usable marijuana from a manufacturing facility, and related activities, including storing, delivering, transferring, and transporting usable marijuana, for the sole purpose of dispensing usable marijuana to a registered qualifying patient, directly or through the registered qualifying patient's registered designated caregiver. The activities of a dispensary include providing educational material and selling usable marijuana related supplies to a registered qualifying patient or a registered designated caregiver.

19-24.1-14. Compassion centers - Application.

1. The department shall establish forms for an application to be registered as a compassion center. For a compassion center registration application to be complete and eligible for review, the applicant shall submit to the department all of the following:
 - a. A nonrefundable application fee, not to exceed five thousand dollars, made payable to the "North Dakota State Department of Health, Medical Marijuana Program".

- b. The legal name, articles of incorporation or articles of organization, and bylaws or operating agreement of the proposed compassion center applicant.
- c. Evidence of the proposed compassion center applicant's registration with the secretary of state and certificate of good standing.
- d. The physical address of the proposed location of the proposed compassion center and:
 - (1) Evidence of approval from local officials as to the proposed compassion center applicant's compliance with local zoning laws for the physical address to be used by the proposed compassion center; and
 - (2) Evidence the physical address of the proposed compassion center is not located within one thousand feet [604.80 meters] of a property line of a pre-existing public or private school.
- e. For a manufacturing facility applicant, a description of the enclosed, locked facility that would be used in the production and processing of marijuana, including steps that will be taken to ensure the production and processing is not visible from the street or other public areas.
- f. The name, address, and date of birth of each principal officer and board member, or of each member-manager, manager, or governor, of the proposed compassion center applicant and verification each officer and board member, or each member-manager, manager, or governor, has consented to a criminal history record check conducted under section 12-60-24.
- g. For each of the proposed compassion center applicant's principal officers and board members, or for each of the proposed compassion center applicant's member-managers, managers, or governors, a description of that individual's relevant experience, including training or professional licensing related to medicine, pharmaceuticals, natural treatments, botany, food science, food safety, production, processing, and the individual's experience running a business entity.
- h. A description of proposed security and safety measures, which demonstrate compliance with the security and safety requirements under section 19-24.1-25.
- i. An example of the design and security features of usable marijuana containers which demonstrates compliance with section 19-24.1-21.
- j. A complete operations manual, which demonstrates compliance with section 19-24.1-27.
- k. A description of the plans for making usable marijuana available on an affordable basis to registered qualifying patients with limited financial resources.

- l. A list of all individuals and business entities having direct or indirect authority over the management or policies of the proposed compassion center applicant.
 - m. A list of all individuals and business entities having an ownership interest in the proposed compassion center applicant, whether direct or indirect, and whether the interest is in profits, land, or building, including owners of any business entity that owns all or part of the land or building.
 - n. The identity of any creditor holding a security interest in the proposed compassion center premises.
2. The department is not required to review an application submitted under this section unless the department determines the application is complete. The criteria considered by the department in reviewing an application must include:
- a. The suitability of the proposed compassion center location, including compliance with any local zoning laws, and the geographic convenience to access compassion centers for registered qualifying patients and registered designated caregivers from throughout the state;
 - b. The character and relevant experience of the principal officers and board members, or of the member-managers, managers, or governors, including training or professional licensing and business experience;
 - c. The applicant's plan for operations and services, including staffing and training plans, whether the applicant has sufficient capital to operate, and the applicant's ability to provide an adequate supply of usable marijuana to registered qualifying patients and registered designated caregivers;
 - d. The sufficiency of the applicant's plans for recordkeeping;
 - e. The sufficiency of the applicant's plans for safety, security, and the prevention of diversion, including the proposed location and security devices employed;
 - f. The applicant's plan for making usable marijuana available on an affordable basis to registered qualifying patients with limited financial resources;
 - g. The applicant's plan for safe and accurate packaging and labeling of usable marijuana; and
 - h. The applicant's plans for testing usable marijuana and marijuana.
3. Following completion of the review under subsection 2, the department shall select the applicants eligible for registration under section 19-24.1-15.

19-24.1-15. Compassion centers - Registration.

1. Upon receipt of notification by the department a compassion center application is eligible for registration, the applicant shall submit all of the following additional items to the department to qualify for registration:
- a. A certification fee, made payable to the "North Dakota State Department of Health, Medical Marijuana Program", in the amount of ninety thousand

- dollars for a dispensary and one hundred ten thousand dollars for a manufacturing facility.
- b. A financial assurance or security bond to ensure the protection of the public health and safety and the environment in the event of abandonment, default, or other inability or unwillingness to meet the requirements of this chapter.
 - c. The legal name, articles of incorporation or articles of organization, and bylaws or operating agreement, of the proposed compassion center applicant.
 - d. The physical address of the proposed compassion center; confirmation the information in the application regarding the physical location of the proposed compassion center has not changed, and if the information has changed the department shall determine whether the new information meets the requirements of this chapter; and a current certificate of occupancy, or equivalent document, to demonstrate compliance with the provisions of state and local fire code for the physical address of the proposed compassion center. It is not necessary for an applicant to resubmit any information provided in the initial application unless there has been a change in that information.
 - e. An update to previously submitted information, including information about compassion center agents and compliance with section 19-24.1-18.
2. If an applicant complies with subsection 1, the department shall issue the applicant a registration certificate.

19-24.1-16. Compassion centers - Renewal.

- 1. A compassion center registration certificate expires two years after issuance. A compassion center may submit a renewal application at any time beginning ninety calendar days before the expiration of the registration certificate. A compassion center shall submit a renewal application a minimum of sixty calendar days before the expiration of the registration certificate to avoid suspension of the certificate.
- 2. The department shall approve a compassion center's renewal application within sixty calendar days of submission, if the following conditions are satisfied:
 - a. The compassion center submits a renewal fee, in the amount of ninety thousand dollars for a dispensary and one hundred ten thousand dollars for a manufacturing facility, which the department shall refund if the department rejects the renewal application;
 - b. The compassion center submits a complete renewal application;
 - c. The department has at no time suspended the compassion center's registration for violation of this chapter;
 - d. Inspections conducted under this chapter do not raise any serious concerns about the continued operation of the compassion center; and

- e. The compassion center continues to meet all the requirements for the operation of a compassion center as set forth in this chapter and rules adopted under this chapter.
3. If a compassion center does not meet the requirements for renewal, the department may not issue a registration certificate and the department shall provide the compassion center with written notice of the determination. If a compassion center's certificate is not renewed, the compassion center shall dispose all marijuana and usable marijuana in accordance with rules adopted under this chapter.

19-24.1-17. Compassion centers - Registration certificates nontransferable - Notification of changes.

1. A registration certificate authorizing operation of a compassion center may not be transferred to another person. Unless a compassion center applies for and receives an amended registration certificate authorizing operation of a compassion center, the registration certificate is void if there is a change in ownership of the compassion center, there is a change in the authorized physical location of the compassion center, or if the compassion center discontinues operation.
2. A compassion center shall provide the department a written notice of any change described under this section at least sixty calendar days before the proposed effective date of the change. The department may waive all or part of the required advance notice to address emergent or emergency situations.

19-24.1-18. Compassion centers - Agents - Registry identification cards.

1. Upon issuance of a compassion center registry certificate, the department shall issue a registry identification card to each qualified compassion center agent associated with the compassion center.
2. To qualify to be issued a registry identification card, each compassion center agent must be at least twenty-one years of age and shall submit all of the following registry identification card application material to the department:
 - a. A photographic copy of the agent's department-approved identification. The agent shall make the identification available for inspection and verification by the department.
 - b. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the agent.
 - c. A written and signed statement from an officer or executive staff member of the compassion center stating the applicant is associated with the compassion center and the capacity of the association.
 - d. The name, address, and telephone number of the agent.
 - e. The agent's social security number.
 - f. The name, address, and telephone number of the compassion center with which the agent is associated.
 - g. The agent's signature and the date.

- h. A nonrefundable application or renewal fee in the amount of two hundred dollars, in the form of a check made out to "North Dakota State Department of Health, Medical Marijuana Program".
3. Each compassion center agent shall consent to a criminal history record check conducted under section 12-60-24 to demonstrate compliance with the eligibility requirements.
- a. All applicable fees associated with the required criminal history record checks must be paid by the compassion center or the agent.
- b. A criminal history record check must be performed upon initial application and biennially upon renewal. A compassion center agent shall consent to a criminal history record check at any time the department determines necessary.
- c. An individual convicted of a drug-related misdemeanor offense within the five-year period before the date of application or a felony offense is prohibited from being a compassion center agent.
4. The department shall notify the compassion center in writing of the purpose for denying a compassion center agent application for a registry identification card. The department shall deny an application if the agent fails to meet the registration requirements or to provide the information required, or if the department determines the information provided is false. The cardholder may appeal a denial or revocation of a registry identification card to the district court of Burleigh County for hearing. The court may authorize the cardholder to appear by reliable electronic means.
5. The department shall issue a compassion center agent a registry identification card within thirty calendar days of approval of an application.
6. A compassion center agent with a registry identification card shall notify the department of any of the following within ten calendar days of the change, in a manner prescribed by the department:
- a. A change in the cardholder's name or address; and
- b. Knowledge of a change that would render the compassion center agent no longer eligible to be a cardholder.
7. If a compassion center agent loses the agent's registry identification card, that agent shall notify the department in writing within twenty-four hours of becoming aware the card has been lost.
8. If a cardholder notifies the department of items listed in this section but the nature of the item reported results in the cardholder remaining eligible, the department shall issue the cardholder a new registry identification card with a new random ten-digit alphanumeric identification number within twenty calendar days of approving the updated information and the cardholder shall pay a fee, not to exceed twenty-five dollars. If a cardholder notifies the department of an item that results in the cardholder being ineligible, the registry identification card immediately becomes void.

9. A compassion center shall notify the department in writing within two calendar days of the date a compassion center agent ceases to work for or be associated with the compassion center. Upon receipt of the notification, that individual's registry identification card becomes void immediately.
10. The registry identification card of a compassion center agent expires one year after issuance or upon the termination of the compassion center's registration certificate, whichever occurs first. To prevent interruption of possession of a valid registry identification card, a compassion center agent shall renew a registry identification card by submitting a complete renewal application no less than forty-five calendar days before the expiration date of the existing registry identification card.

19-24.1-19. Cardholders - Compassion centers - Revocation.

1. The department may suspend or revoke a cardholder's registry identification card or a compassion center's registration certificate for a material misstatement by an applicant in an application or renewal.
2. The department may suspend or revoke a registry identification card or registration certificate for a violation of this chapter or rules adopted under this chapter.
3. If a compassion center agent or a compassion center sells or otherwise transfers marijuana or usable marijuana to a person not authorized to possess marijuana or usable marijuana under this chapter, the department shall revoke the cardholder's registry identification card or the compassion center's registration certificate, or both. If the department revokes a cardholder's registry identification card under this subsection, the cardholder is disqualified from further participation under this chapter.
4. The department shall provide written notice of suspension or revocation of a registry identification card or registration certificate.
 - a. A suspension may not be for a period longer than six months.
 - b. A manufacturing facility may continue to produce and process and to possess marijuana and usable marijuana during a suspension, but may not transfer or sell usable marijuana.
 - c. A dispensary may continue to possess usable marijuana during a suspension, but may not purchase, dispense, or transfer usable marijuana.
 - d. The cardholder or the compassion center may appeal a denial or revocation of a registry identification card or registry certificate to the district court of Burleigh County for hearing. The court may authorize the cardholder or compassion center to appear by reliable electronic means.

19-24.1-20. Cardholders - Compassion centers - Violations - Penalties.

1. A cardholder or compassion center that fails to provide a notice as required under this chapter shall pay to the department a fee in an amount established by the department, not to exceed one hundred fifty dollars.
2. In addition to any other penalty applicable in law, a manufacturing facility or a manufacturing facility agent is guilty of a class B felony for intentionally selling

- or otherwise transferring marijuana or usable marijuana in any form, to a person other than a dispensary, or for internationally selling or otherwise transferring marijuana in any form other than usable marijuana, to a dispensary. A person convicted under this subsection may not continue to be affiliated with a compassion center and is disqualified from further participation under this chapter.
3. In addition to any other penalty applicable in law, a dispensary or a dispensary agent is guilty of a class B felony for intentionally selling or otherwise transferring usable marijuana, to a person other than a registered qualifying patient or a registered designated caregiver, to a registered qualifying patient who is a minor, or in a form not allowed under this chapter. A person convicted under this subsection may not continue to be affiliated with a compassion center and is disqualified from further participation under this chapter.
 4. In addition to any other penalty applicable in law, a dispensary or a dispensary agent is guilty of a class B felony for intentionally selling or otherwise transferring usable marijuana, in a form other than pediatric medical marijuana, to a registered designated caregiver, for use by a registered qualifying patient who is a minor. A person convicted under this subsection may not continue to be affiliated with a compassion center and is disqualified from further participation under this chapter.
 5. A compassion center or compassion center agent that knowingly submits false records or documentation required by the department to certify a compassion center under this chapter is guilty of a class C felony. A person convicted under this subsection may not continue to be affiliated with a compassion center and is disqualified from further participation under this chapter.
 6. In addition to any other penalty applicable in law, if a compassion center violates this chapter the department may fine the compassion center up to one thousand dollars for each violation.
 7. In addition to any other penalty applicable in law, a registered qualifying patient who intentionally sells or otherwise transfers usable marijuana, to another person, is guilty of a class B felony. An individual convicted under this subsection is disqualified from further participation under this chapter.
 8. In addition to any other penalty applicable in law, a registered designated caregiver who intentionally sells or otherwise transfers usable marijuana, to a person other than a registered qualifying patient to which the caregiver is associated with registration, is guilty of a class B felony. An individual convicted under this subsection is disqualified from further participation under this chapter.
 9. An individual who knowingly submits false records or documentation required by the department to receive a registry identification card under this chapter is guilty of a class A misdemeanor. An individual convicted under this subsection may not continue to be affiliated with a compassion center and is disqualified from further participation under this chapter.
 10. A health care provider who holds a financial interest in a compassion center may not knowingly refer a patient to a compassion center or to a registered designated caregiver, advertise in a compassion center, or issue a written

certification. A health care provider who violates this subsection must be fined up to one thousand dollars.

19-24.1-21. Compassion centers - Dispensing.

1. A compassion center shall comply with the dispensing requirements of this section.
2. Design and security features of usable marijuana containers must be in accordance with rules adopted under this chapter.
3. A manufacturing facility or agent of the manufacturing facility may not dispense marijuana or usable marijuana, except the manufacturing facility or agent may sell usable marijuana to a dispensary.
4. A dispensary or agent of the dispensary may not dispense usable marijuana unless the dispensary first uses the verification system to confirm the registered qualifying patient or registered designated caregiver identification card is valid. A dispensary or agent of the dispensary:
 - a. May not dispense usable marijuana to a person other than a registered qualifying patient or a registered qualifying patient's registered designated caregiver. If a registered qualifying patient is a minor:
 - (1) The dispensary or agent of the dispensary may not dispense usable marijuana to a minor; and
 - (2) The usable marijuana dispensed to the minor's designated caregiver must be in the form of pediatric medical marijuana.
 - b. May not dispense to a registered qualifying patient or registered designated caregiver more than the allowable amount of usable marijuana and may not dispense an amount if it is known that amount would cause the recipient to purchase or possess more usable marijuana than is permitted under this chapter.
 - c. May not dispense to a registered qualifying patient or registered designated caregiver the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form unless the registry identification card and verification system authorize this form of usable marijuana.

19-24.1-22. Compassion centers - Inspections.

1. A compassion center is subject to random inspection by the department. During an inspection, the department may review the compassion center's records, including the compassion center's financial and dispensing records, which may track transactions according to registered qualifying patient and registered designated caregiver registry identification numbers.
2. The department shall conduct inspections of compassion centers to ensure compliance with this chapter. The department shall conduct inspections of manufacturing facilities for the presence of contaminants. The department shall select a certified laboratory to conduct random quality sampling testing, in accordance with rules adopted under this chapter. A compassion center shall pay the cost of all random quality sampling testing.

19-24.1-23. Compassion centers - Pesticide testing.

A manufacturing facility shall test marijuana at a manufacturing facility for the presence of pesticides. If a marijuana pesticide test or a random quality sampling test under section 19-24.1-22 indicates the presence of a pesticide, the manufacturing facility shall report the test result immediately to the department and to the agriculture commissioner. Upon the order of the department or agriculture commissioner, the manufacturing facility immediately shall destroy all affected or contaminated marijuana and usable marijuana inventory in accordance with rules adopted under this chapter, and shall certify to the department and to the agriculture commissioner that all affected or contaminated inventory has been destroyed.

19-24.1-24. Compassion centers - Cannabis plants.

The health council shall adopt rules establishing the maximum amount of plants of the genus cannabis and the amount of marijuana and usable marijuana a compassion center may possess. Except as otherwise provided under this section, the rules may not allow a manufacturing facility to possess more than one thousand plants, regardless of the stage of growth, and may not allow a dispensary to possess more than three thousand five hundred ounces [99.22 kilograms] of usable marijuana at any time, regardless of formulation. The rules may allow a manufacturing facility to possess no more than an additional fifty plants for the exclusive purpose of department-authorized research and development related to production and processing.

19-24.1-25. Compassion centers - Security and safety.

1. In compliance with rules adopted under this chapter, a compassion center shall implement appropriate security and safety measures to deter and prevent the unauthorized entrance to areas containing marijuana and containing usable marijuana and to prevent the theft of marijuana and usable marijuana.
2. A compassion center shall limit to authorized personnel entry to an area in which production or producing takes place or in which marijuana or usable marijuana is held.
3. A compassion center must have a fully operational security alarm system at the authorized physical address which includes an electrical support backup system for the alarm system to provide suitable protection against theft and diversion.
4. A compassion center shall maintain documentation in an auditable form for:
 - a. All maintenance inspections and tests conducted under this section, and any servicing, modification, or upgrade performed on the security alarm system;
 - b. An alarm activation or other event that requires response by public safety personnel; and
 - c. Any breach of security.

19-24.1-26. Compassion centers - Inventory control.

1. A compassion center shall comply with the inventory control requirements provided under this section and rules adopted under this chapter.
 - a. A manufacturing facility shall:
 - (1) Employ a bar coding inventory control system to track batch, strain, and amounts of marijuana and usable marijuana in inventory and to track amounts of usable marijuana sold to dispensaries; and
 - (2) Host a secure computer interface to transfer inventory amounts and dispensary purchase information to the department.
 - b. A dispensary shall:
 - (1) Employ a bar coding inventory control system to track batch, strain, and amounts of usable marijuana in inventory and to track amounts sold to registered qualifying patients and registered designated caregivers; and
 - (2) Host a secure computer interface to transfer inventory amounts and registered qualifying patient and registered designated caregiver purchase information to the department.
2. A compassion center shall store the compassion center's marijuana and usable marijuana in an enclosed locked facility with adequate security, in accordance with rules adopted under this chapter.
3. A compassion center shall conduct inventories of marijuana and usable marijuana at the authorized location at the frequency and in the manner provided by rules adopted under this chapter. If an inventory results in the identification of a discrepancy, the compassion center shall notify the department and appropriate law enforcement authorities immediately. A compassion center shall document each inventory conducted by the compassion center.

19-24.1-27. Compassion centers - Operating manual - Training.

1. A compassion center shall maintain a current copy of the compassion center's operating manual that meets the requirements of rules adopted under this chapter.
2. A compassion center shall develop, implement, and maintain on the premises an onsite training curriculum or shall enter contractual relationships with outside resources capable of meeting compassion center agent training needs. A compassion center shall ensure each compassion center agent receives training that includes:
 - a. Education regarding professional conduct, ethics, and state and federal laws regarding patient confidentiality;
 - b. Informational developments in the field of medical use of marijuana;
 - c. All safety and security measures required under section 19-24.1-25;

- d. Specific procedural instructions for responding to an emergency, including robbery or violent accident; and
- e. The compassion center's operating manual and all requirements related to recordkeeping.

19-24.1-28. Compassion centers - Bylaws and operating agreements.

As part of a proposed compassion center's initial application, the applicant shall provide to the department a current copy of the applicant's bylaws or operating agreement. Upon receipt of a registration certificate, a compassion center shall maintain the bylaws or operating agreement in accordance with this chapter. In addition to any other requirements, the bylaws or operating agreement must include the ownership or management structure of the compassion center; the composition of the board of directors, board of governors, member-managers, or managers; and provisions relative to the disposition of revenues and earnings.

19-24.1-29. Compassion centers - Retention of and access to records and reports.

A compassion center shall keep detailed financial reports of proceeds and expenses. A compassion center shall maintain all inventory, sales, and financial records in accordance with generally accepted accounting principles. The compassion center shall maintain for a period of seven years all reports and records required under this section. A compassion center shall allow the department, or an audit firm contracted by the department, access at all times to all books and records kept by the compassion center.

19-24.1-30. Compassion centers - Recordkeeping - Compassion center agents - Registry identification cards.

1. Each compassion center shall maintain:
 - a. In compliance with rules adopted under this chapter, a personnel record for each compassion center agent for a period of at least three years following termination of the individual's affiliation with the compassion center. The personnel record must comply with minimum requirements set by rule adopted under this chapter.
 - b. A record of the source of funds that will be used to open or maintain the compassion center, including the name, address, and date of birth of any investor.
 - c. A record of each instance in which a current or prospective board member, member-manager, manager, or governor, who managed or served on the board of a business or not-for-profit entity and in the course of that service was convicted, fined, or censured or had a registration or license suspended or revoked in any administrative or judicial proceeding.
2. Each compassion center agent shall hold a valid registry identification card.

19-24.1-31. Verification system.

1. The department shall maintain a confidential list of cardholders and each cardholder's address, phone number, and registry identification number.

2. The department shall establish a secure verification system. The verification system must allow law enforcement personnel, health care providers, pharmacists, compassion centers, and compassion center agents twenty-four-hour access to enter a registry identification number to determine whether the number corresponds with a current valid registry identification card. The system may disclose:
 - a. Whether an identification card is valid;
 - b. The name of the cardholder;
 - c. Whether the cardholder is a registered qualifying patient, registered designated caregiver, or registered compassion center agent;
 - d. Whether a registered qualifying patient is a minor; and
 - e. The registry identification number of any affiliated registered qualifying patient, registered designated caregiver, or compassion center.

19-24.1-32. Protections.

Except as provided in sections 19-24.1-20 and 19-24.1-33:

1. A registered qualifying patient is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity for the acquisition, use, or possession of usable marijuana or related supplies under this chapter.
2. A registered designated caregiver is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity:
 - a. For assisting a registered qualifying patient with the acquisition, use, or possession of usable marijuana or related supplies under this chapter, if the registered designated caregiver is connected to the registered qualifying patient through the department's registration process.
 - b. For receiving compensation for costs associated with assisting a registered qualifying patient with the acquisition, use, or possession of usable marijuana or related supplies under this chapter, if the registered designated caregiver is connected to the registered qualifying patient through the department's registration process.
3. It is presumed a registered qualifying patient is engaged in, or a registered designated caregiver is assisting with, the acquisition, use, or possession of usable marijuana or related supplies in accordance with this chapter if the registered qualifying patient or registered designated caregiver is in possession of a valid registry identification card and is not in possession of usable marijuana in an amount that exceeds what is authorized under this chapter. This presumption may be rebutted by evidence the conduct related to acquisition, use, or possession of usable marijuana or related supplies was not for the purpose of treating or alleviating the registered qualifying patient's debilitating medical condition under this chapter.
4. A person is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or

- occupational or professional regulating entity, for being in the presence or vicinity of the medical use of marijuana authorized under this chapter.
5. A manufacturing facility is not subject to prosecution, search or inspection, or seizure, except by the department or a department designee, under this chapter for acting under this chapter to:
 - a. Produce or process or to conduct related activities for the sole purpose of selling usable marijuana to a dispensary; or
 - b. Transfer, transport, or deliver marijuana or usable marijuana to and from a department designee or manufacturing facility in accordance with this chapter.
 6. A dispensary is not subject to prosecution, search or inspection, or seizure, except by the department or a department designee, under this chapter for acting under this chapter to:
 - a. Purchase usable marijuana from a manufacturing facility and conducting related activities for the sole purpose of dispensing usable marijuana, selling related supplies, and providing educational materials to registered qualifying patients and designated caregivers; or
 - b. Transfer usable marijuana to and from a department designee or related marijuana facility in accordance with this chapter.
 7. A registered compassion center agent is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity, for working or volunteering for a compassion center if the action performed by the compassion center agent on behalf of the compassion center is authorized under this chapter.
 8. The sale and possession of marijuana paraphernalia by a dispensary is lawful if in accordance with this chapter.
 9. The medical use of marijuana by a registered cardholder or the producing and processing and the dispensing of usable marijuana by a compassion center is lawful if in accordance with this chapter.
 10. A health care provider is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity, solely for providing a written certification or for otherwise stating in the health care provider's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of usable marijuana to treat or alleviate the patient's debilitating medical condition or for refusing to provide written certification or a statement. This chapter does not release a health care provider from the duty to exercise a professional standard of care for evaluating or treating a patient's medical condition.
 11. A cardholder or registered compassion center is not subject to arrest or prosecution for use of drug paraphernalia or possession with intent to use drug paraphernalia in a manner consistent with this chapter.

12. A person in possession of medical marijuana waste in the course of transporting or disposing of the waste under this chapter and rules adopted under this chapter may not be subject to arrest or prosecution for that possession or transportation.
13. A person in possession of marijuana or medical marijuana in the course of performing laboratory tests as provided under this chapter and rules adopted under this chapter may not be subject to arrest or prosecution for that possession or testing.

19-24.1-33. Limitations.

This chapter does not authorize a person to engage in, and does not prevent the imposition of any civil liability or criminal liability or other penalties for engaging in the following conduct:

1. Undertaking an activity under the influence of marijuana if doing so would constitute negligence or professional malpractice.
2. Possessing or consuming usable marijuana:
 - a. On a school bus or school van that is used for school purposes;
 - b. On the grounds of any public or private school;
 - c. At any location while a public or private school sanctioned event is occurring at that location;
 - d. On the grounds of a correctional facility; or
 - e. On the grounds of a child care facility or licensed home day care, unless authorized under rules adopted by the department of human services.
3. Undertaking any activity prohibited by section 23-12-09, 23-12-10, 23-12-10.2, 23-12-10.4, 23-12-10.5, or 23-12-11.
4. Using a combustible delivery form of usable marijuana or vaporizing usable marijuana under this chapter if the smoke or vapor would be inhaled by a minor who is not the registered qualifying patient for whom the usable marijuana is intended.
5. Operating, navigating, or being in actual physical control of a motor vehicle, aircraft, train, or motorboat, while under the influence of marijuana. However, a registered qualifying patient may not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.

19-24.1-34. Acts not prohibited - Acts not required.

1. This chapter does not require:
 - a. A government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of marijuana;

- b. A person in lawful possession of property to allow a guest, client, customer, or other visitor to possess or consume usable marijuana on or in that property;
 - c. A landlord to allow production or processing on rental property; or
 - d. A health care provider to provide a written certification or otherwise recommend marijuana to a patient.
2. This chapter does not prohibit an employer from disciplining an employee for possessing or consuming usable marijuana in the workplace or for working while under the influence of marijuana.

19-24.1-35. Facility restrictions.

1. A basic care facility, nursing facility, assisted living facility, adult day care facility, or adult foster care home licensed in the state may adopt reasonable restrictions on the medical use of marijuana by residents or individuals receiving inpatient services, including:
- a. The facility will not store or maintain the registered qualifying patient's supply of usable marijuana.
 - b. The facility, caregivers, or hospice agencies serving the facility's residents are not responsible for providing the usable marijuana for registered qualifying patients or assisting with the medical use of marijuana.
 - c. Usable marijuana can be consumed by a method other than vaporizing or combustion.
 - d. Consumption of usable marijuana is limited to a place specified by the facility.
2. A facility listed in subsection 1 may not unreasonably limit a registered qualifying patient's medical use of marijuana as authorized under this chapter unless failing to do so would cause the facility to lose a monetary or licensing-related benefit under federal law or regulations.

19-24.1-36. Health council - Rules.

1. The health council shall adopt rules as necessary for the implementation and administration of this chapter, including transportation and storage of marijuana and usable marijuana, advertising, packaging and labeling, standards for testing facilities, inventory management, and accurate recordkeeping.
2. The health council may adopt rules regarding the operation and governance of additional categories of registered medical marijuana establishments.
3. The health council shall adopt rules to establish requirements for reporting incidents of individuals not authorized to possess marijuana or usable marijuana under this chapter and who are found in possession of marijuana or usable marijuana. The rules must identify professionals required to report, the information the reporter is required to report, and actions the reporter shall take to secure the marijuana or usable marijuana.

4. The health council shall adopt rules to establish requirements for law enforcement officials and health care professionals to report to the department incidents involving overdose or adverse reaction related to the use of usable marijuana.

19-24.1-37. Confidentiality.

1. Data in a registration application or renewal and supporting data submitted by a qualifying patient, designated caregiver, compassion center, proposed compassion center, or compassion center agent, including data on designated caregivers and health care providers, is confidential.
2. Data kept or maintained by the department may be disclosed for:
 - a. The verification of registration certificates and registry identification cards under this chapter;
 - b. Submission of the annual report required by this chapter;
 - c. Submission to the North Dakota prescription drug monitoring program;
 - d. Notification of state or local law enforcement of apparent criminal violation of this chapter;
 - e. Notification of state and local law enforcement about falsified or fraudulent information submitted for purposes of obtaining or renewing a registry identification card; or
 - f. Notification of the North Dakota board of medicine or North Dakota board of nursing if there is a reason to believe a health care provider provided a written certification and the department has reason to believe the health care provider otherwise violated this chapter.
3. Upon a cardholder's written request, the department may confirm the cardholder's status as a registered qualifying patient or a registered designated caregiver to a third party, such as a landlord, school, medical professional, or court.
4. Data submitted to a local government to demonstrate compliance with any security requirements required by local zoning ordinances or regulations is confidential.

19-24.1-38. Advisory board.

1. The governor shall appoint six members to serve on an advisory board that:
 - a. Shall advise the department in implementation of the medical marijuana program.
 - b. May receive reports from the department on the status and activities of the medical marijuana program.
 - c. May provide recommendations to the department and the legislative management on the medical marijuana program.

2. The state health officer shall serve as an ex officio voting member and as chairman of the advisory board.

19-24.1-39. Report to legislative management.

Annually, the department shall submit to the legislative management a report that does not disclose any identifying information about registered cardholders, compassion centers, or health care providers, but contains the following information:

1. The number of registry identification card applications and renewals;
2. The number of registered qualifying patients and registered designated caregivers;
3. The nature of the debilitating medical conditions of the registered qualifying patients;
4. The number of registry identification cards revoked;
5. The number of health care providers providing written certifications for qualifying patients;
6. The number of compassionate care centers; and
7. Any expenses incurred and revenues generated by the department from the medical marijuana program.

19-24.1-40. Medical marijuana fund - Continuing appropriation.

The medical marijuana fund is established in the state treasury. The department shall deposit in the fund all fees collected under this chapter. The department shall administer the fund. Moneys in the fund are appropriated to the department on a continuing basis for use in administering this chapter.

SECTION 2. AMENDMENT. Section 54-60-03 of the North Dakota Century Code is amended and reenacted as follows:

54-60-03. Commissioner of commerce - Duties.

With the advice and counsel of the North Dakota development foundation, the governor shall appoint a commissioner to supervise, control, and administer the department. The commissioner serves at the pleasure of the governor and receives a salary set by the governor within the limits of legislative appropriations. The commissioner:

1. Shall file an oath of office in the usual form before commencing to perform the duties of the commissioner;
2. Shall serve as chairman of the cabinet;
3. Shall appoint personnel as may be determined necessary to carry out the duties of the department;
4. Shall manage the operations of the department and oversee each of the divisions;

5. Shall assume central responsibilities to develop, implement, and coordinate a working network of commerce service providers;
 6. Shall coordinate the department's services with commerce-related services of other state agencies;
 7. Shall advise and cooperate with departments and agencies of the federal government and of other states; private businesses, agricultural organizations, and associations; research institutions; and with any individual or other private or public entity;
 8. May enter contracts upon terms and conditions as determined by the commissioner to be reasonable and to effectuate the purposes of this chapter;
 9. Shall report between the first and tenth legislative days of each regular legislative session to a standing committee of each house of the legislative assembly as determined by the legislative management and shall report annually to the foundation:
 - a. On the department's goals and objectives since the last report;
 - b. On the department's goals and objectives for the period until the next report;
 - c. On the department's long-term goals and objectives;
 - d. On the department's activities and measurable results occurring since the last report; and
 - e. On commerce benchmarks, including the average annual wage in the state, the gross state product exclusive of agriculture, and the number of primary sector jobs in the state;
 10. May not certify as a primary sector business a compassion center registered under chapter 19-24.1;
 11. Shall adopt rules necessary to implement this chapter; and
- ~~11-12.~~ May take any actions necessary and proper to implement this chapter.

⁷⁹ **SECTION 3. AMENDMENT.** Paragraph 3 of subdivision a of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- (3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, any structure or improvement used by a manufacturing facility as defined in section 19-24.1-01, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural

⁷⁹ Section 57-02-08 was also amended by section 4 of Senate Bill No. 2344, chapter 171.

commodity beyond the ordinary handling of that commodity by a farmer prior to sale.

⁸⁰ **SECTION 4. AMENDMENT.** Paragraph 2 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, with the exception of marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming in such products' unmanufactured state and has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years. For purposes of this paragraph, "farmer" includes a:
- (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.
- (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
- (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.

SECTION 5. STATE DEPARTMENT OF HEALTH REPORT - MEDICAL MARIJUANA DEBILITATING MEDICAL CONDITIONS. During the 2017-18 interim, the state department of health shall conduct a study of the feasibility and desirability of adding identified medical conditions or providing for an administrative process to add identified medical conditions to the definitions of "debilitating medical condition" under the medical marijuana program. The department shall include the findings and recommendations of this study, together with any legislation required to implement the recommendations, in the annual reports made to the legislative management under section 19-24.1-39.

SECTION 6. REPEAL. Chapter 19-24 of the North Dakota Century Code is repealed.

⁸⁰ Section 57-02-08 was also amended by section 3 of Senate Bill No. 2344, chapter 171.

SECTION 7. LEGISLATIVE INTENT - MEDICAL MARIJUANA PENALTIES. It is the intent of the sixty-fifth legislative assembly that if future legislative assemblies amend criminal penalties relating to marijuana, the corresponding medical marijuana penalties also be amended in order to retain consistency.

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

Approved April 17, 2017

Filed April 18, 2017

GAME, FISH, PREDATORS, AND BOATING

CHAPTER 172

HOUSE BILL NO. 1204

(Representatives Heinert, Magrum, Oliver, Porter, Zubke)
(Senators D. Larson, Oban)

AN ACT to amend and reenact section 20.1-03-01.5 and subdivision a of subsection 1 of section 20.1-03-11 of the North Dakota Century Code, relating to youth hunting; and to repeal section 20.1-04-05 of the North Dakota Century Code, relating to the protection of bald eagles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-01.5. Apprentice hunter validation.

An individual born after December 31, 1961, who is ~~sixteen~~twelve years of age or older and who does not possess a hunter safety education course certificate of completion may be issued an apprentice hunter validation. An apprentice hunter validation is valid for only one license year in a lifetime. An individual in possession of an apprentice hunter validation may hunt small game and deer only when accompanied by an adult licensed to hunt in this state whose license was not obtained using an apprentice hunter validation. An apprentice hunter validation holder must obtain all required licenses and stamps. For purposes of this section, "accompanied" means to stay within a distance of another individual that permits uninterrupted visual contact in unaided verbal communication.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

- a. An individual whose ~~eleventh~~, ~~twelfth~~, or thirteenth birthday occurs in the same year as a youth deer hunting season is entitled to receive a statewide white-tailed antlerless deer permit but may hunt only in that youth deer hunting season.

SECTION 3. REPEAL. Section 20.1-04-05 of the North Dakota Century Code is repealed.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 173

HOUSE BILL NO. 1150

(Representative Porter)
(Senators Armstrong, Unruh)

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to bonus points awarded to participants in lotteries for hunting licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Purchase of bonus points awarded for lotteries.

1. When an application for a license issued by a lottery that accrues bonus points is made by an eligible resident with the intent to forfeit the opportunity to receive that license, the director shall limit that applicant to the purchase of one bonus point for that year for that lottery. The applicant shall pay the same fee as the respective license.
2. The director shall allocate fees collected under subsection 1 to the private lands open to sportsmen program.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 174

SENATE BILL NO. 2239

(Senator Oehlke)

AN ACT to amend and reenact section 20.1-03-12 of the North Dakota Century Code, relating to fees charged for watercraft for hire; to repeal section 20.1-13-04 of the North Dakota Century Code, relating to annual inspections for watercraft for hire; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12. Schedule of fees for licenses and permits.

The fees collected under this section for licenses and permits must be deposited with the state treasurer and credited to the game and fish fund. Forty-five dollars of each nonresident big game hunting license fee must be used for the private land initiative. The various license and permit fees are as follows:

1. For a resident, age sixteen and over, small game hunting license, ten dollars.
2. For a nonresident small game hunting license, one hundred dollars.
3. For a resident big game hunting license, thirty dollars, except the fee for a licensee under age sixteen is ten dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
4. Except for a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents under subsection 4 of section 20.1-03-11, for a nonresident big game hunting license, two hundred fifty dollars, and for a nonresident bow license, two hundred fifty dollars, and a nonrefundable five dollar application fee must accompany any lottery license fee under this subsection, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1. For a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents, fifty dollars.
5. For a resident fur-bearer license, fifteen dollars.
6. For a resident fishing license, sixteen dollars, except that for a resident sixty-five years or over, a resident totally or permanently disabled, or a resident disabled veteran who has a fifty percent service-connected disability as determined by the department of veterans' affairs or has an extra-schedular rating to include individual unemployability that brings the veteran's total disability ratio to fifty percent, the license fee is five dollars.
7. For a nonresident fishing license, forty-five dollars.
8. For a resident husband and wife fishing license, twenty-two dollars.

9. For a nonresident nongame hunting license, fifteen dollars.
10. For a resident wild turkey permit, fifteen dollars.
11. For an annual general game license, three dollars.
12. For a license to a nonresident buyer or shipper of green furs, or that person's agent, the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, whichever is greater.
13. For a license to a resident buyer or shipper of green furs, eight dollars for each place of business maintained by that person within this state.
14. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
15. For an annual license to practice taxidermy, twenty-five dollars.
16. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than that person's home or to points outside this state, three dollars.
17. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
18. For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, eighteen dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, thirty-six dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, forty-five dollars.
19. ~~To operate watercraft used for hire, the following license fees apply for three years:~~
 - ~~Class 1. Each craft capable of carrying two adults of average weight, six dollars.~~
 - ~~Class 2. Each craft capable of carrying three adults of average weight, six dollars.~~
 - ~~Class 3. Each craft capable of carrying four adults of average weight, six dollars.~~
 - ~~Class 4. Each craft capable of carrying five adults of average weight, six dollars.~~
 - ~~Class 5. Each craft capable of carrying up to eight adults of average weight, nine dollars.~~
 - ~~Class 6. Each craft capable of carrying up to ten adults of average weight, twelve dollars.~~

~~Class 7. Each craft capable of carrying up to fifteen adults of average weight, twenty-four dollars.~~

~~Class 8. Each craft capable of carrying sixteen or more adults of average weight, thirty dollars.~~

- ~~20.~~ For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, fifteen dollars for each hoop-net or trap, and fifteen dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.
- ~~21-20.~~ For a resident paddlefish tag annual license, ten dollars per tag.
- ~~22-21.~~ For a nonresident paddlefish tag annual license, twenty-five dollars and fifty cents per tag.
- ~~23-22.~~ For an annual resident license to sell minnows or other live bait at wholesale, fifty dollars.
- ~~24-23.~~ For an annual license to sell minnows or other live bait at retail, fifteen dollars, except the fee is seventy-five dollars if white suckers are sold.
- ~~25-24.~~ For an annual license to operate a private fish hatchery, seventy-five dollars.
- ~~26-25.~~ For a resident commercial frog license, fifty dollars.
- ~~27-26.~~ For a nonresident commercial frog license, two hundred dollars.
- ~~28-27.~~ For a resident frog license, three dollars.
- ~~29-28.~~ For a resident husband and wife frog license, five dollars.
- ~~30-29.~~ For a shooting preserve operating permit, one hundred dollars, plus thirty cents per acre [.40 hectare] for each acre [.40 hectare].
- ~~31-30.~~ For a nonresident waterfowl hunting license, one hundred dollars.
- ~~32-31.~~ For a nonresident husband and wife fishing license, sixty dollars.
- ~~33-32.~~ For a nonresident short-term three-day fishing license, twenty-five dollars.
- ~~34-33.~~ For a nonresident fur-bearer and nongame hunting license, forty dollars.
- ~~35-34.~~ For a combination license, fifty dollars.
- ~~36-35.~~ For a white-tailed deer license sold to certified guides or outfitters and provided by them to nonresidents, two hundred fifty dollars.
- ~~37-36.~~ For a resident swan license, ten dollars.
- ~~38-37.~~ For a nonresident swan license, thirty dollars.
- ~~39-38.~~ For a resident sandhill crane license, ten dollars.
- ~~40-39.~~ For a nonresident sandhill crane license, thirty dollars.
- ~~41-40.~~ For a resident commercial clam license, one hundred dollars.

- ~~42-41.~~ For a nonresident commercial clam license, one thousand dollars.
- ~~43-42.~~ For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the director a surety bond in the sum of two thousand dollars.
- ~~44-43.~~ For an annual class B nonresident license to sell minnows or other live bait at wholesale, two hundred fifty dollars.
- ~~45-44.~~ For a bighorn sheep license issued to a nonresident, five hundred dollars.
- ~~46-45.~~ For a nonresident reciprocal trapping license, three hundred fifty dollars.
- ~~47-46.~~ For a nonresident spring white goose license, fifty dollars.
- ~~48-47.~~ For a resident certificate fee, one dollar, and for a nonresident certificate fee, two dollars. An agent may not charge a service fee for issuing a resident or nonresident certificate fee.
- ~~49-48.~~ For a nonresident short-term ten-day fishing license, thirty-five dollars.
- ~~50-49.~~ For a nonresident wild turkey permit, eighty dollars.
- ~~51-50.~~ For a statewide nonresident waterfowl hunting license, one hundred fifty dollars.
- ~~52-51.~~ For an annual class A nonresident license to sell minnows or other live bait at wholesale, five hundred dollars.
- ~~53-52.~~ For a resident early Canada goose season license, five dollars.
- ~~54-53.~~ For a nonresident early Canada goose season license, fifty dollars.
- ~~55-54.~~ For a resident disabled veteran combined general game, habitat stamp, small game, and fur-bearer license, three dollars.

~~The fees for these licenses and permits must be deposited with the state treasurer and credited to the game and fish fund. Forty-five dollars of each nonresident big game hunting license fee must be used for the private land initiative.~~

SECTION 2. REPEAL. Section 20.1-13-04 of the North Dakota Century Code is repealed.

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

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 175

SENATE BILL NO. 2284

(Senator Robinson)
(Representatives D. Anderson, Brandenburg)

AN ACT to amend and reenact section 20.1-03-17 of the North Dakota Century Code, relating to agent fees for distribution of hunting licenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-17. (Effective after April 1, 2016) Issuance of licenses - Who to issue - Disposition of proceeds.

All hunting, fur-bearer, fishing, and taxidermists' licenses must be issued by the director, deputy director, and bonded game wardens. The deputy director and each bonded game warden shall send the director all license fees.

Upon request, the director may appoint the person making the request an agent to distribute hunting and fishing licenses. The director may provide licenses to agents located outside this state if there are no agents located a reasonable distance within this state where nonresidents may obtain licenses. Upon request, the director may appoint the county auditor of any county as an agent to distribute hunting and fishing licenses. The director may require an agent to show evidence of adequate financial security before the agent is appointed. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond. Agents may be bonded through the state bonding fund. ~~The agents may charge purchasers a service fee of fifty cents for each license. Service fees may be retained by the agent.~~ An agent may charge a purchaser up to three percent of the total license fee excluding the certificate fee. The agent shall return the remainder of the license fees to the director at least once each month. Notwithstanding section 26.1-21-11, if a claim against the state bonding fund is not filed within sixty days of the expiration of the reporting period provided in this section, the claim is waived. Deposits are to be accompanied by a report showing the amounts received from the sale of each type of license, the amount retained, and the net amounts deposited. The director shall deposit all license fees received with the state treasurer to be credited to the game and fish fund. Each agent appointed to distribute hunting and fishing licenses shall implement a computerized online licensing system approved by the department. The agent is responsible for any equipment, supplies, and technical support associated with selling licenses online.

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

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 176

HOUSE BILL NO. 1025

(Legislative Management)
(Agriculture and Natural Resources)

AN ACT to create and enact section 20.1-04-07.1 and chapter 20.1-05.1 of the North Dakota Century Code, relating to wild turkey hunting licenses for individuals receiving hunting expeditions from a nonprofit organization and authorization for issuance of special allocation hunting licenses; to amend and reenact sections 20.1-02-04, 20.1-04-07, 20.1-08-04.1, 20.1-08-04.2, and 20.1-08-04.6 of the North Dakota Century Code, relating to authorization for issuance of special allocation hunting licenses; to repeal sections 20.1-08-04.8, 20.1-08-04.12, and 20.1-08-04.13 of the North Dakota Century Code, relating to authorization for issuance of special allocation hunting licenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-04. Duties of director.

The director shall:

1. Maintain an office in Bismarck.
2. Adopt rules necessary to the conduct of the department.
3. Keep an accurate record of all the transactions and expenditures of the department and submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.
4. Enforce state laws involving wildlife.
5. Collect and distribute statistics and information germane to this title and publish information and reports, including a monthly bulletin, for the education of the public in conservation matters.
6. Examine all waters of the state and, wherever suitable waters are found, arrange to plant, stock, or deposit available fish, spawn, or fry.
7. Cooperate with the United States fish and wildlife service, or any other appropriate federal agency, and make applications for fish, spawn, and fry, to apportion and deposit in waters of the state.
8. Cooperate with and assist clubs and individuals in stocking the waters of this state with fish.
9. Remove or take from any public waters containing a surplus of fish any reasonable quantity of fish for stocking other public waters, hatching or propagating purposes, or exchange with other states and countries.

10. Control, construct, mark, designate, manage, and have charge of all state fish hatcheries, state game farms, game refuges, and game reserves owned, leased, or controlled for the propagation and protection of game birds, game animals, and fish.
11. Supervise the breeding, propagation, capture, distribution, and preservation of game birds, game animals, and fish as the director deems advisable.
12. Adopt rules necessary for carrying out section 20.1-10-01 and these rules have the force of law after one publication in the daily newspapers of this state.
13. Provide the necessary blank forms for making applications for licenses of all kinds and distribute them among those authorized to sell licenses.
14. Keep a record of all permits issued for the purpose of propagation and domestication of game birds or protected animals.
15. ~~Issue four any deer licenses and six any white-tailed deer licenses annually to the injured military wildlife project of North Dakota for distribution. A license issued under this subsection is valid during the period of the deer bow season.~~

SECTION 2. AMENDMENT. Section 20.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-07. Governor's proclamation concerning the taking of wild turkeys - ~~National wild turkey federation raffle~~ - Youth spring wild turkey licenses - ~~Outdoor adventure foundation~~ Spring wild turkey licenses.

1. ~~By proclamation the~~The governor by proclamation may provide for a permit season to take wild turkeys in the manner, number, places, and times deemed in the state's best interests; ~~however:~~
 - a. ~~By proclamation the governor may make available to the national wild turkey federation one license per year to hunt wild turkeys in the spring in the manner, places, and times as the governor prescribes. The national wild turkey federation shall hold a raffle or may auction to the highest bidder, whether resident or nonresident, a license to hunt wild turkeys. If an individual receives a wild turkey license through the raffle or the auction, the individual is not eligible to apply for a wild turkey license through the game and fish department that year. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. Ten percent of the net proceeds of the raffle or auction may be retained by the local, state, or national wild turkey federation entity conducting the raffle or auction. All remaining net proceeds must be deposited in the national wild turkey federation superfund and used for wild turkey management and related projects in this state. The national wild turkey federation shall submit reports concerning the raffle or auction as the director requires.~~
 - b. ~~By proclamation the~~ The governor also by proclamation may allow individuals who are first-time youth spring wild turkey hunters to receive one spring wild turkey license valid for the regular spring wild turkey season. To be eligible to receive a spring wild turkey license, an individual must be fifteen years of age or younger on the opening day of the spring wild turkey season and have never received a spring wild turkey license.

~~e. By proclamation the governor may make available to the outdoor adventure foundation up to two licenses to hunt a turkey in the spring season. The foundation shall make one license available to each qualified youth to hunt as provided in the governor's proclamation. A qualified youth receiving a license under this section must comply with hunter education requirements and if under the age of eighteen must be accompanied by an adult twenty-one years of age or older. As used in this section, "qualified youth" means an individual who has cancer or a life-threatening illness, is of legal age to hunt a turkey, is under twenty-five years of age, is a resident, and is sponsored by the foundation. The foundation must provide the department supporting documentation demonstrating compliance with this section. The director may adopt rules to implement this section.~~

2. The governor by proclamation shall make available to residents and nonresidents any permits/licenses remaining after the resident fall drawing.

SECTION 3. Section 20.1-04-07.1 of the North Dakota Century Code is created and enacted as follows:

20.1-04-07.1. Spring wild turkey licenses - Nonprofit organizations.

The director shall issue four spring wild turkey licenses and permits to hunt wild turkeys to individuals residing in North Dakota who are selected by a nonprofit organization as provided under section 20.1-05.1-01.

SECTION 4. Chapter 20.1-05.1 of the North Dakota Century Code is created and enacted as follows:

20.1-05.1-01. Special allocation hunting license authorization.

The director shall authorize issuance of the following annual special allocation hunting licenses:

1. Four any deer licenses and six any white-tailed deer licenses per year to the injured military wildlife project of North Dakota for distribution. A license issued under this subsection is valid during the period of the deer bow season.
2. One license per year to the national wild turkey federation to hunt wild turkeys in the spring in the manner, places, and times as the governor provides by proclamation. The national wild turkey federation shall hold a raffle for, or may auction to the highest bidder, whether resident or nonresident, the license to hunt wild turkeys. If an individual receives a wild turkey license through the raffle or auction, the individual is not eligible to receive a wild turkey license through the game and fish department that year. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. Ten percent of the net proceeds of the raffle may be retained by the local, state, or national wild turkey federation entity conducting the raffle. All remaining net proceeds must be deposited in the national wild turkey federation superfund and used for wild turkey management and related projects in this state. The national wild turkey federation shall submit reports concerning the raffle as the director requires.
3. Up to two licenses per year to the outdoor adventure foundation to hunt a turkey in the spring season. The foundation shall make authorized licenses available to sponsored qualified youths to hunt as the governor provides by proclamation. A qualified youth receiving a license under this section must

comply with hunter education requirements and if under the age of eighteen must be accompanied by an adult twenty-one years of age or older. As used in this section, "qualified youth" means an individual who has cancer or a life-threatening illness, is of legal age to hunt a turkey, is under twenty-five years of age, is a resident, and is sponsored by the foundation. The foundation must provide the department supporting documentation demonstrating compliance with this section.

4. One license per year to the midwest chapter of the wild sheep foundation to hunt bighorn sheep in the manner, places, and times as the governor provides by proclamation. The midwest chapter of the wild sheep foundation shall hold a raffle or auction under rules adopted by the director with residents and nonresidents eligible to participate. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection. Ten percent of gross raffle proceeds may be retained by the midwest chapter of the wild sheep foundation and ninety percent of gross raffle proceeds must be remitted to the department. All auction proceeds must be remitted to the department. An individual who receives a license through the raffle or auction may not transfer the license.
5. One license per year to the North American wildlife enforcement memorial museum and educational center to hunt moose in a manner, places, and times as the governor provides by proclamation. The North American wildlife enforcement memorial museum and educational center shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. The individual who receives the license from the raffle may not transfer the license. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. The net proceeds distributed to the North American wildlife enforcement memorial museum and educational center must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the international peace garden. The North American wildlife enforcement memorial museum and educational center shall submit reports concerning the raffle as the director requires. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.
6. One license per year to the rocky mountain elk foundation to hunt elk in a manner, places, and times as the governor provides by proclamation. The rocky mountain elk foundation shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. The net proceeds distributed to the rocky mountain elk foundation must be used for elk management or other wildlife and conservation-related projects in North Dakota as described under rocky mountain elk foundation policies and objectives. The rocky mountain elk foundation shall submit reports concerning the raffle as the director requires. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.
7. One license per year to the mule deer foundation to hunt mule deer in the manner, places, and times as the governor provides by proclamation. The mule deer foundation shall hold a raffle or auction under rules adopted by the director with residents and nonresidents eligible to participate. If an individual receives a mule deer license through the raffle or auction, the individual is not

eligible to receive a mule deer license through the game and fish department that year. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds of the raffle or auction must be used for mule deer management and related projects in North Dakota. The mule deer foundation shall submit reports concerning the raffle or auction as the director requires.

8. One license per year to the North Dakota hunter educators association to hunt antelope in the manner, places, and times as the governor prescribes by proclamation. The North Dakota hunter educators association shall hold a raffle under rules adopted by the director. Only residents are eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds of the raffle must be used for sponsoring mentored hunts for youth who may otherwise not have the means to go afield to hunt, establishing a statewide network of shooting locations for youth to become familiar with archery equipment and firearms under the supervision of a certified volunteer hunter education instructor, and purchasing advertising in news media during hunting season concerning firearms safety and hunting ethics and the promotion of safe and responsible hunting. If an individual receives an antelope license through the raffle, the individual is not eligible to apply for an antelope license through the game and fish department that year. The North Dakota hunter educators association shall submit reports concerning the raffle as the director requires.
9. One any elk license, one any moose license, up to seven white-tailed deer licenses, and up to two antelope licenses to the outdoor adventure foundation to hunt the species indicated on the license in the manner, places, and times as the governor prescribes by proclamation. The foundation shall make one license available to each qualified youth to hunt the species of big game indicated on the license as provided in the governor's proclamation. A qualified youth receiving a license under this section must comply with hunter education requirements and if under the age of eighteen must be accompanied by an adult twenty-one years of age or older. As used in this section, "qualified youth" means an individual who has been diagnosed with cancer or a life-threatening illness, is of legal age to hunt the species for which the license is valid, is under twenty-five years of age, is a resident, and is sponsored by the foundation. The foundation must provide the department supporting documentation demonstrating compliance with this section.

20.1-05.1-02. Discretionary special allocation hunting license authorization.

1. Subject to the restrictions under this section and in addition to the special allocation licenses authorized under section 20.1-05.1-01, if determined appropriate by the director based on the sustainability of the species population, the director may issue to eligible organizations the following annual special allocation hunting licenses:

 - a. Not more than two elk licenses, but the total issued under this subdivision may not exceed two percent of the general lottery allocation of elk licenses for the season.
 - b. Not more than two moose licenses, but the total issued under this subdivision may not exceed two percent of the general lottery allocation of moose licenses for the season.

- c. Not more than two antelope licenses, but the total issued under this subdivision may not exceed two percent of the general lottery allocation of antelope licenses for the previous season.
 - d. Not more than ten white-tailed deer licenses.
2. An eligible organization may apply annually to be considered for issuance of up to two special allocation hunting licenses under this section. Applications under this subsection must be filed at the times, in the manner, and containing the information required by rules adopted by the director. If more applications are filed than the number of licenses under this section available for that species for a season, the director shall determine by lottery which organizations will receive the available licenses.
3. An eligible organization that obtains a license under this section and conducts a raffle or auction to determine the recipient of the license must conduct the raffle or auction in compliance with rules adopted by the director. An eligible organization that obtains a license under this section shall submit reports concerning a raffle or auction as the director requires. An individual may apply to receive an elk or moose license through a raffle or auction under this section as well as through the game and fish department general lottery. If an individual receives an elk or moose license under this section, the individual is not eligible to receive an elk or moose license through the game and fish department general lottery that year and may not obtain an elk or moose license under section 20.1-05.1-01 that year. If an individual receives an elk or moose license under section 20.1-05.1-01, the individual is not eligible to receive an elk or moose license under this section that year.
4. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this section.
5. For purposes of this section, "eligible organization" means an organization that:
 - a. Is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] and provides with its application a copy of the letter from the internal revenue service to that effect.
 - b. Is on file as a nonprofit corporation in good standing in the office of the secretary of state.
 - c. Agrees in its application to contribute at least ten percent of the net proceeds of any raffle of a license under this section to a conservation-related project to be conducted in this state and approved by the director.
 - d. Is not the recipient of a special allocation hunting license under section 20.1-05.1-01.

SECTION 5. AMENDMENT. Section 20.1-08-04.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.1. Governor's proclamation concerning the hunting of bighorn sheep - Minnesota-Wisconsin chapter of the foundation for North American wild sheep raffle or auction- Certain license recipients not eligible to apply again.

The governor may by proclamation provide for a season to hunt bighorn sheep in the manner, number, places, and times as the governor prescribes. Licenses to hunt bighorn sheep must be issued by lottery; however, the governor may by proclamation make available to the Minnesota-Wisconsin chapter of the foundation for North American wild sheep a license to hunt bighorn sheep in the manner, places, and times as the governor prescribes, except special allocation licenses issued under subsection 1 of section 20.1-05.1-01. Upon payment of the nonrefundable application fee required by section 20.1-03-12.2, a nonresident may participate in the state lottery. One license to hunt bighorn sheep may be issued to a nonresident participating in the state lottery. If a nonresident is issued a license to hunt bighorn sheep, no other nonresident may be issued a license to hunt bighorn sheep through the state lottery. If all of the licenses to hunt bighorn sheep made available through the state lottery are issued to residents, then a nonresident is not eligible to be issued a license to hunt bighorn sheep through the state lottery. ~~The Minnesota-Wisconsin chapter of the foundation for North American wild sheep shall hold either a raffle or an auction under rules adopted by the director with residents and nonresidents eligible to participate. Ten percent of gross raffle proceeds may be retained by the Minnesota-Wisconsin chapter of the foundation for North American wild sheep and ninety percent of gross raffle proceeds must be remitted to the department. All auction proceeds must be remitted to the department. Individuals who receive a license through the raffle or auction may not transfer the license. Individuals may participate in the state lottery and the raffle or auction; however, individuals under subsection 4 of section 20.1-05.1-01, but an individual~~ may not receive more than one license in any one year. An individual may only receive one license to hunt bighorn sheep through the state lottery in a lifetime. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this section.

SECTION 6. AMENDMENT. Section 20.1-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.2. Governor's proclamation concerning the hunting of moose - Raffle.

The governor may by proclamation provide for a season to hunt moose in a manner, number, places, and times as the governor prescribes. Licenses to hunt moose must be issued by lottery, except as provided under subsection 8 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the North American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation one license per year to hunt moose in a manner, places, and times as the governor prescribes. In addition, the governor may by proclamation make available a license under section 20.1-08-04.13. ~~The North American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. The person who receives the license from the raffle may not transfer the license. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. Fifty percent of all net proceeds must be used for elk management or other wildlife and in conservation-related projects in this state as described under rocky mountain elk foundation policies and objectives. All remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the international peace garden.~~

~~The North American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation shall submit reports concerning the raffle as the director requires. A person may only receive one license to hunt moose issued by lottery in a lifetime. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this section.~~

SECTION 7. AMENDMENT. Section 20.1-08-04.6 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.6. Governor's proclamation concerning the hunting of elk - Rocky mountain elk foundation raffle ~~Special elk depredation management licenses.~~

~~The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor prescribes. Licenses to hunt elk must be issued by lottery, except as provided under subsection 7 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center a license to hunt elk in a manner, places, and times as the governor prescribes. In addition, the governor may by proclamation make available a license under section 20.1-08-04.13. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and fifty percent of all net proceeds must be used for elk management or other wildlife and conservation related projects in North Dakota as described under rocky mountain elk foundation policies and objectives and all remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the international peace garden. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall submit reports concerning the raffle as the director requires.~~

An owner of farmed elk who is experiencing elk depredation problems may contact the director. Upon investigation, the director may issue special elk depredation management licenses. The governor by proclamation shall establish a procedure to issue elk depredation management licenses in a timely manner.

Except for landowners who receive a license under subsection 7 of section 20.1-03-11 and landowners who receive special elk depredation management licenses issued to landowners under subsection 7 of section 20.1-03-11, and persons who receive a special elk depredation management license issued by lottery under this section, a person may only receive one license to hunt elk issued by lottery in a lifetime. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this section.

SECTION 8. REPEAL. Sections 20.1-08-04.8, 20.1-08-04.12, and 20.1-08-04.13 of the North Dakota Century Code are repealed.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 177

SENATE BILL NO. 2318

(Senators Schaible, Armstrong, Rust)
(Representatives Kempenich, Porter)

AN ACT to amend and reenact section 20.1-04-15 of the North Dakota Century Code, relating to the opening date of pheasant season.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-04-15 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-15. Pheasant season - Opening.

The open or lawful season on pheasant and the open or lawful season on duck may not commence on the same weekend. Except as otherwise provided in this section for the opening of pheasant season for youth, the open or lawful season on pheasant may not open earlier than one-half hour before sunrise and the season may not commence earlier than the first Saturday of October nor later than October twelfth of any given year. The governor, in the governor's proclamation, may provide a pheasant hunting season for youth.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 178

SENATE BILL NO. 2308

(Senators Vedaa, Anderson, Clemens, Kannianen)
(Representatives D. Anderson, C. Johnson)

AN ACT to amend and reenact section 20.1-06-07 and subsection 3 of section 20.1-07-03.1 of the North Dakota Century Code, relating to identification of fishhouses and coyote snares.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-06-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-07. Fishhouses - Removal - Penalty.

1. A person may erect, have, or maintain on the ice in any waters of this state a fishhouse, used or to be used while ice fishing, or a dark house, used or to be used for spearfishing. Fishhouse and dark house owners are subject to the rules the director may adopt governing the construction, maintenance, and use of these units. The outside of each unoccupied unit must have inscribed on it, in readily distinguishable characters at least three inches [7.62 centimeters] high, the registration number issued by the department for the fishhouse, or the owner's name and address or telephone number. An unoccupied fishhouse or dark house left on the ice without a registration number, or an owner's name and address or telephone number may be removed or destroyed by the department. The department may not issue a fishhouse registration number, unless the division of state radio has integrated game and fish department license information into the national law enforcement telecommunications system. Any person who violates this subsection is guilty of a class 2 noncriminal offense.
2. Each unit must be removed from the ice by that date established by the governor's proclamation. Failure to remove a unit is deemed an abandonment and the director may remove or destroy abandoned units.

SECTION 2. AMENDMENT. Subsection 3 of section 20.1-07-03.1 of the North Dakota Century Code is amended and reenacted as follows:

3. A person using a snare for the purpose of taking coyotes shall permanently affix with a metal or plastic tag the registration number issued by the department, or that person's name, address, and telephone number to each snare being used.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 179

HOUSE BILL NO. 1207

(Representatives M. Ruby, Grueneich, Heinert, Porter, D. Ruby)
(Senators O. Larsen, Schaible, Vedaa)

AN ACT to create and enact section 20.1-11-14 of the North Dakota Century Code, relating to the disposition of property abandoned on certain public lands; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 20.1-11-14 of the North Dakota Century Code is created and enacted as follows:

20.1-11-14. Property abandoned on state game refuges, leased or managed real property, and state game or fish management areas.

The director may seize tangible property presumed abandoned on state game refuges, real property leased or managed by the game and fish department, and state game or fish management areas. After ninety days, the director may dispose of seized, unclaimed, tangible property presumed abandoned, or order it be turned over to the North Dakota wildlife federation to be sold for the highest price obtainable. The sale proceeds, after the expenses of the seizure and the sale are deducted, must be remitted to the North Dakota wildlife federation report all poachers fund. A report of the sale, supported by proper vouchers covering all deductions made for expenses, must be filed for the record with the director.

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

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 180

HOUSE BILL NO. 1367

(Representatives Weisz, Nathe)
(Senator Unruh)

AN ACT amend and reenact sections 20.1-13-07 and 20.1-13-10 of the North Dakota Century Code, relating to personal watercraft and towing an individual on water skies or similar devices; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-13-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13-07. Prohibited operation - Penalty.

1. ~~No person~~An individual may not operate ~~any~~a motorboat or vessel, or manipulate ~~any~~ water skis, a surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any ~~person~~individual. Reckless or negligent operation of a motorboat or vessel includes weaving through congested motorboat or vessel traffic, jumping the wake of another motorboat or vessel within one hundred feet [30.48 meters] of the motorboat or vessel, or in any other manner that is not reasonable or prudent.
2. ~~A person~~An individual may not operate a motorboat or vessel, or manipulate water skis, a surfboard, or similar device if any of the following apply:
 - a. ~~That person~~The individual has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a motorboat or vessel.
 - b. ~~That person~~The individual is under the influence of intoxicating liquor.
 - c. ~~That person~~The individual is under the influence of ~~any~~a drug or substance or combination of drugs or substances to a degree which renders ~~that person~~the individual incapable of safely operating a motorboat or vessel.
 - d. ~~That person~~The individual is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely operating a motorboat or vessel.

The fact that ~~a person~~an individual charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against ~~any~~a charge for violating this section, unless a drug ~~which~~that predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to ~~that person~~the individual.

3. ~~No person~~An individual under twelve years of age may not operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a ~~person~~an individual eighteen years of age or older. ~~Any person~~An individual who violates this subsection is guilty of a class 2 noncriminal offense.
4. ~~No person~~An individual of twelve through fifteen years of age may not operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a ~~person~~an individual eighteen years of age or older or the operator has taken and passed a boating course approved by the department. ~~Any person~~An individual who violates this subsection is guilty of a class 2 noncriminal offense.
5. ~~No person~~An individual may not cause or knowingly permit a minor under sixteen years of age to operate a motorboat propelled by over a ten horsepower motor unless the minor is otherwise authorized to do so by this section.
6. ~~No person~~An individual may not operate a motorboat or vessel within one hundred feet [30.48 meters] of a person fishing from a shoreline, swimmer, swimming diving raft, or an occupied, anchored or nonmotorized vessel, or within two hundred fifty feet [76.20 meters] of a reduced speed or slow or no wake sign at greater than slow or no wake speed.
7. ~~No person~~An individual may not operate or permit the operation of a personal watercraft:
 - a. Without each person on board the personal watercraft wearing a United States coast guard approved type I, II, III, or V personal flotation device;
 - b. Within one hundred feet [30.48 meters] of a person fishing from a shoreline, swimmer, swimming diving raft, or an occupied, anchored or nonmotorized vessel at greater than slow or no wake speed;
 - c. While towing a ~~person~~an individual on water skis, a kneeboard, an inflatable craft, or any other device unless an observer is on board or the personal watercraft is equipped with a mirror on each side which provides the operator an unobstructed field of vision to the rear;
 - d. Without a lanyard-type engine cutoff switch being attached to the ~~person~~individual, clothing, or personal flotation device of the operator, if the personal watercraft is equipped by the manufacturer with such a device;
 - e. If any part of the spring-loaded throttle mechanism has been removed, altered, or tampered with so as to interfere with the return-to-idle system;
 - f. To chase or harass wildlife;
 - g. Through emergent or floating vegetation at other than slow or no wake speed;
 - h. In a manner that unreasonably or unnecessarily endangers life, limb, or property, including weaving through congested watercraft traffic, jumping

the wake of another watercraft within one hundred feet [30.48 meters] of the other watercraft; or

i. In any other manner that is not reasonable and prudent.

8. An individual who violates subdivision c of subsection 7 is guilty of a class 2 noncriminal offense.

SECTION 2. AMENDMENT. Section 20.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13-10. Water skis and surfboard - Penalty.

1. ~~No person~~An individual may ~~not~~ manipulate any water skis, surfboard, or similar device without wearing a life preserver approved by the department, ~~unless the individual is sixteen years of age or older and engaged in windsurfing or boardsailing.~~
2. ~~No person~~Any time between one hour after sunset to one hour before sunrise, an individual may not operate a vessel on any waters of this state towing a ~~person or persons~~an individual on water skis, a surfboard, or similar device, ~~nor may any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.~~
3. ~~The provisions of subsections~~Subsections 1 and 2 do not apply to a performer engaged in a professional exhibition or a person~~an individual engaged in an activity authorized under section 20.1-13-11, and the provisions of subsection 1 do not apply to a person sixteen years of age or older engaged in windsurfing or boardsailing.~~
4. ~~No person~~An individual may ~~not~~ operate or manipulate any vessel, towrope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in ~~such a way as to cause the water skis, surfboard, or similar device, or any person thereon~~an individual on the device, to collide with or strike against any object or ~~person~~individual.
5. ~~No person~~An individual may ~~not~~ operate a vessel on any waters of this state towing a ~~person or persons~~an individual on water skis, a surfboard, or similar device unless there is another ~~person~~individual in the towing vessel observing the ~~person or persons~~any individual being towed or the vessel is equipped with a mirror at least seventy-eight square inches [198.12 square centimeters] which provides the operator an unobstructed field of vision to the rear. ~~However, this~~This subsection does not apply to a personal watercraft or to members of any organization regularly staging water ski shows, tournaments, or exhibitions while engaged in the performance of such shows, tournaments, or exhibitions. The department shall adopt rules to allow such organizations to practice in preparation for such events, as prescribed in section 20.1-13-11.
6. ~~Any person~~An individual who violates this section is guilty of a class 2 noncriminal offense.

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

Approved April 11, 2017

Filed April 12, 2017

GOVERNMENTAL FINANCE

CHAPTER 181

SENATE BILL NO. 2222

(Senators Schaible, Armstrong, Cook)
(Representatives Kading, Rohr, Schmidt)

AN ACT to amend and reenact section 21-02-06 of the North Dakota Century Code, relating to uncollected taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-02-06 of the North Dakota Century Code is amended and reenacted as follows:

21-02-06. Certifying amount of uncollected taxes.

The county auditor, upon request of the officers of a political subdivision, shall certify to them the amount of uncollected taxes remaining upon the tax lists to the credit of the political subdivision on the last day of the preceding month, and annually shall certify such information to the clerk of each township on February fifteenth, to the auditor of each city on September tenth, and to the business manager of each school district on ~~June~~ July tenth. The county auditor also shall certify to the clerk, auditor, business manager, or secretary, or equivalent officer, of each political subdivision, at the time of making the monthly apportionment of funds, the amount of cash collections apportioned for that month to the political subdivision and the amount derived from levies of each tax year.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 182

SENATE BILL NO. 2296

(Senators Burckhard, Kannianen, Dotzenrod)
(Representatives Hatlestad, Magrum, Toman)

AN ACT to amend and reenact section 21-04-09 of the North Dakota Century Code, relating to pledge of security in place of depository bond; and to repeal section 21-04-11 of the North Dakota Century Code, relating to records of securities.

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~~treasurer of a public corporation and every other individual legally charged with the custody of public funds 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~~ treasurer or other individual legally charged with the custody of public funds 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~~ a custodian, the custodian shall issue a joint 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 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 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. REPEAL. Section 21-04-11 of the North Dakota Century Code is repealed.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 183

HOUSE BILL NO. 1191

(Representatives Klemin, B. Anderson, Pyle)
(Senators Bekkedahl, Kreun)

AN ACT to amend and reenact section 21-13-02 of the North Dakota Century Code, relating to loans for political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-13-02 of the North Dakota Century Code is amended and reenacted as follows:

21-13-02. Political subdivision authority to enter agreement for bank or credit union loans.

A political subdivision may borrow against its anticipated revenue, from a bank or credit union located in this state. A bank or credit union loan and terms must be authorized by resolution of the governing body for the political subdivision. The resolution must identify the revenue to be used to repay the loan and any collateral that will secure repayment of the loan. The loan agreement must be signed on behalf of the political subdivision by the president, chairman, or equivalent officer; and also by the political subdivision's auditor; business manager; and secretary, or equivalent officer of the political subdivision.

Approved March 13, 2017

Filed March 13, 2017

HEALTH AND SAFETY

CHAPTER 184

SENATE BILL NO. 2173

(Senator Anderson)
(Representative Laning)

AN ACT to repeal section 23-01-03.2 of the North Dakota Century Code, relating to duties of the health council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 23-01-03.2 of the North Dakota Century Code is repealed.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 185

SENATE BILL NO. 2264

(Senators Bekkedahl, Laffen, D. Larson)
(Representatives Hatlestad, Howe, Sukut)

AN ACT to amend and reenact subsection 2 of section 23-01-05.5 of the North Dakota Century Code, relating to providing notification of the report of death to the next of kin or authorized representative of the deceased.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-01-05.5 of the North Dakota Century Code is amended and reenacted as follows:

2. An autopsy report and any working papers and notes relating to an autopsy report are confidential and may be disclosed only as permitted by this section. The report of death is ~~a public record~~ subject to disclosure ~~under section 44-04-18~~ as follows:
 - a. The next of kin or authorized representative requesting the report of death is responsible for providing to the state forensic examiner or the examiner's designee satisfactory proof of relationship to the deceased and contact information for notification of the report of death.
 - b. When in receipt of the information in subdivision a, the state forensic examiner, examiner's designee, county coroner, or pathologist who performed the autopsy shall make a good faith effort to immediately notify the decedent's next of kin or authorized representative of the availability of the report of death. The notification or attempts to notify the next of kin or authorized representative must be recorded and must precede any public disclosure of the report of death.
 - c. The report of death becomes a public record eight days after the report of death is finalized.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 186

SENATE BILL NO. 2099

(Human Services Committee)
(At the request of the State Department of Health)

AN ACT to amend and reenact section 23-01-39 of the North Dakota Century Code, relating to the immunization program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-39 of the North Dakota Century Code is amended and reenacted as follows:

23-01-39. 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 shortage or delay in vaccine availability, disaster, public health emergency, terrorist

- attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.
- b. The department ~~shall~~may 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.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 187

HOUSE BILL NO. 1292

(Representatives Toman, Nathe, Porter, Rohr, Seibel)
(Senator Cook)

AN ACT to create and enact a new section to chapter 23-02.1 of the North Dakota Century Code, relating to issuance of a certified copy of a fetal loss; and to amend and reenact section 23-02.1-01 of the North Dakota Century Code, relating to definitions in the Health Statistics Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸¹ **SECTION 1. AMENDMENT.** Section 23-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-01. Definitions.

As used in this chapter:

1. "Authorized representative" means a person that has the legal authority to act on behalf of the person named on a record, including a personal representative or guardian.
2. "Certified" means a copy of the original record on file with the state department of health which is signed and sealed by the state registrar or deputy state registrar.
3. "Dead body" means a lifeless human body or parts of such body or bones thereof from the state of which it may reasonably be concluded that death recently occurred.
4. "Electronic birth registration system" means the electronic birth registration system maintained by the state department of health.
5. "Electronic death registration system" means the electronic death registration system maintained by the state department of health.
6. "Facts of death" means the demographic and personal information pertaining to an individual's death.
7. "Fetal death" or "birth resulting in stillbirth" means death occurring before the complete expulsion or extraction from its mother of a product of human conception. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

⁸¹ Section 23-02.1-01 was also amended by section 2 of House Bill No. 1294, chapter 92.

8. "Filing" means the presentation of a record, report, or other information provided for in this chapter of a birth, death, fetal death, adoption, marriage, divorce, or other event as specified by the state health officer for registration by the state registrar.
9. "Final disposition" means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.
10. "Health statistics" means data derived from records of birth, death, fetal death, marriage, divorce, or other records relating to the health of the populace or the state of the environment.
11. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more individuals unrelated by blood, or to which individuals are committed by law.
12. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.
13. "Medical certification" means the medical information pertaining to an individual's death, including the cause and manner of death.
14. "Miscarriage of birth" means the expulsion of a fetus from the womb, spontaneously or as a result of an accident, before twenty weeks gestation.
15. "Personal or real property interests" means ownership or other legal rights or duties concerning personal or real property.
- ~~15-16.~~ "Physician" means an individual authorized or licensed to practice medicine or osteopathy under chapter 43-17.
- ~~16-17.~~ "Registration" means the acceptance by the state registrar and incorporation into official records, reports, or other records provided for in this chapter, of birth, death, fetal death, marriage, divorce, or other records as may be determined by the state health officer.
- ~~17-18.~~ "Relative" means an individual's current or surviving spouse, a parent or legal guardian, a child, a grandparent, or a grandchild. The state registrar may require proof of the relationship.
- ~~18-19.~~ "Subregistrar" means a funeral director or other suitable individual from a licensed funeral home who is appointed by the state registrar for the purpose of issuing burial-transit permits.
- ~~19-20.~~ "System of health statistics tabulation and analysis" includes the tabulation, analysis, and presentation or publication of statistical data derived from health statistics.
- ~~20-21.~~ "System of vital records registration" includes the registration, collection, preservation, amendment, and certification of birth, death, fetal death,

marriage, divorce, or other records as may be determined necessary by the state health officer or the state health officer's designee.

SECTION 2. A new section to chapter 23-02.1 of the North Dakota Century Code is created and enacted as follows:

Fetal loss.

The state registrar may issue a certified copy of a fetal loss to an individual who experiences a documented miscarriage of birth, if the individual provides to the state registrar a completed fetal loss request form established by the state department of health which is signed by the mother or the father and a letter signed by a hospital, physician, or other medical attendant documenting proof of pregnancy and fetal loss.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 188

HOUSE BILL NO. 1338

(Representatives Seibel, Kreidt, Nathe, Porter)
(Senators Klein, D. Larson, J. Lee)

AN ACT to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to indigent burial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸² **SECTION 1. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

23-06-03. Duty of burial - Indigent burial - Decedent's instructions.

1. The duty of ~~burying~~disposition of the body of a deceased individual devolves upon the following individual in the order of priority:
 - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the individual would otherwise have the duty of final disposition under this section;
 - b. The surviving husband or wife~~spouse~~ if the deceased was married or, if;
 - c. If the deceased was not married but left kindred, upon one or more individuals in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
 - d. The surviving parent or parents of the decedent, each having equal authority;
 - e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
 - f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild

⁸² Section 23-06-03 was also amended by section 8 of House Bill No. 1294, chapter 92.

- who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
- g. The grandparent or the grandparents of the decedent, each having equal authority;
 - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;
 - i. An individual who was acting as the guardian of the decedent with authority to make health care decisions for the decedent at the time of death;
 - j. An adult who exhibited special care and concern for the decedent;
 - k. An individual respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; or
 - l. The appropriate public or court authority, as required by law. For purposes of this subdivision, the appropriate public or court authority includes the county social service board of the county in which the death occurred if the individual dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred.
2. If there is only one individual in a degree of relationship to the decedent described in subsection 1, and a district court determines the person and the decedent were estranged at the time of death, the right to control and the duty of disposition devolves to the next degree of relationship under subsection 1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.
 3. If an individual to whom the right to control and duty of disposition devolves under subsection 1, refuses to accept or declines to act upon the right or duty, that right and duty passes as follows:
 - a. To another individual with the same degree of relationship to the decedent as the individual refusing to accept or declining to act; or
 - b. To the individual in the next degree of relationship to the decedent under subsection 1.
 4. If a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting the court make a determination in the matter. If the right to control and duty of disposition devolves to more than one individual with the same degree of relationship to the decedent and those individuals do not, by majority vote,

make a decision regarding arrangements and final disposition and a district court has been petitioned to make a determination, the court shall consider the following factors in making a determination:

- a. The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
 - b. The degree of the personal relationship between the decedent and each of the individuals in the same degree of relationship to the decedent;
 - c. The expressed wishes and directions of the decedent and the extent to which the decedent provided resources for the purpose of carrying out the wishes or directions; and
 - d. The degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.
5. If the individual who has the duty of burial/final disposition does not bury/arrange for final disposition of the body within the time required by this chapter, the individual next specified shall bury or otherwise dispose of the body within the requirements of this chapter.
- 3-6. a. ~~If the deceased is not survived by an individual described by subsection 1 and did not leave sufficient means to defray funeral pay for expenses of final disposition, including the cost of a casket, and is not survived by an individual described by subsection 1 and identified for financial responsibility within the county's general assistance policy, within fifteen days of application for services~~ the county social service board of the county in which the deceased had residence for county general assistance purposes or, if residence cannot be established, within fifteen days of application for assistance the county social service board of the county in which the death occurs shall employ ~~some~~ a person to arrange for and supervise the ~~burial or cremation~~final disposition. If the deceased was a resident or inmate of a public institution, within fifteen days of application for assistance the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the burial or cremation.
- b. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars.
 - c. The county social services board may provide for the use of a military casket or urn, if the deceased was a veteran as defined in section 37-01-40, unless the additional cost exceeds the negotiated expenses of this section or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary casket.
 - d. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, ~~less any.~~ The county social service board may not decrease the county payment due to a nominal amount left by the deceased or contributed by kin or any other

party to defray the expenses of burial or cremation. Funds adequate to allow for burial instead of cremation are considered nominal under this section.

- 4-7. If the individual with the duty of burialfinal disposition under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that person shall honor those instructions, to the extent reasonable and possible, to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 23-06-31, or a document of gift for an anatomical gift.
- 5-8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury or cremate the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 189

SENATE BILL NO. 2151

(Senators Holmberg, Armstrong, Myrdal)
(Representatives K. Koppelman, Vetter)

AN ACT to amend and reenact section 23-06.5-17 of the North Dakota Century Code, relating to health care directives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06.5-17 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-17. Optional health care directive form.

The following is an optional form of a health care directive and is not a required form:

HEALTH CARE DIRECTIVE

I _____, understand this document allows me to do ONE OR ALL of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make and communicate decisions for myself.

AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT

THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS

FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE

HEALTH CARE DECISIONS FOR MYSELF

(I know I can change my agent or alternate agent at any time

and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II and/or Part III. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.

When I am unable to make and communicate health care decisions for myself, I trust and appoint _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO
IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS
FOR MYSELF

(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive and deciding about mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

____(1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.

____(2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

My fears about my health care:

My spiritual or religious beliefs and traditions:

My beliefs about when life would be no longer worth living:

My thoughts about how my medical condition might affect my family:

(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank).

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

If I were dying and unable to make and communicate health care decisions for myself, I would want:

If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

In all circumstances, my ~~doctors~~health care providers will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my ~~doctor~~health care provider:

Where I would like to live to receive health care:

Where I would like to die and other wishes I have about dying:

My wishes about what happens to my body when I die (cremation, burial, whole body donation):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

(A) I WANT TO BE AN ORGAN DONOR

I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following (initial one statement):

Any needed organs and tissue.

Only the following organs and tissue: _____

(B) I DO NOT WANT TO BE AN ORGAN DONOR

I do not want to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes.

PART IV: MAKING THE DOCUMENT LEGAL

PRIOR DESIGNATIONS REVOKED. I revoke any prior health care directive.

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE)

I sign my name to this Health Care Directive Form on _____
at

(date)

(city)

(state)

(you sign here)

(THIS HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS HEALTH CARE DIRECTIVE.)

NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The person notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the execution of the document must not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

Option 1: Notary Public

State of _____

County of _____

In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(Signature of Notary Public)

My commission expires _____, 20__.

Option 2: Two Witnesses

Witness One:

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness One)

(Address)

Witness Two:

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness Two)

(Address)

ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapacitated. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not able to make health care decisions, I must notify the principal's ~~physician~~ health care provider.

(Signature of agent/date)

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

I have read a written explanation of the nature and effect of an appointment of a health care agent that is attached to my health care directive.

Dated this ____ day of _____, 20 ____.

(Signature of Principal)

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 190

HOUSE BILL NO. 1215

(Representatives Weisz, Devlin, Kreidt)
(Senator J. Lee)

AN ACT to amend and reenact subsection 1 of section 23-09.3-01 of the North Dakota Century Code, relating to the definition of basic care facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-09.3-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Basic care facility" means a residence, not licensed under chapter 23-16 by the department, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services and:
 - a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; ~~or~~
 - b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility; ~~or~~
 - c. Is attached to a nursing home or assisted living facility and its staff are available to meet the needs of all residents and comply with state and federal regulations.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 191

HOUSE BILL NO. 1433

(Representatives Simons, Rick C. Becker, Johnston, Kiefert, B. Koppelman, Magrum, Olson, Schatz, Toman)
(Senators Kannianen, O. Larsen)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to the direct sale of food by the producer to a consumer; and to amend and reenact sections 19-07-01 and 36-24-06 of the North Dakota Century Code, relating to the sale and production of animal-based products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-07-01 of the North Dakota Century Code is amended and reenacted as follows:

19-07-01. Eggs to be graded - Exemption.

All eggs sold or offered for sale to an ultimate consumer in this state must be candled, graded, and labeled with the correct grade designation. "Eggs" in this chapter means eggs in the shell which are the product of the domesticated chickenpoultry. A producer of eggs when selling only eggs of the producer's own flock production is exempt from the provisions of this chapter.

SECTION 2. A new chapter to title 23 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Cottage food operator" means an individual who produces or packages cottage food products in a kitchen designed and intended for use by the residents of a private home.
2. "Cottage food product" means baked goods, jams, jellies, and other food and drink products produced by a cottage food operator.
3. "Delivery" means the transfer of a cottage food product resulting from a transaction between a cottage food operator and an informed end consumer.
4. "Farmers market" means a market or group of booths where farmers and other cottage food operators sell cottage food products directly to consumers.
5. "Home consumption" means food consumed within a private home or food from a private home consumed only by family members, employees, or nonpaying guests.
6. "Informed end consumer" means an individual who is the last individual to purchase a cottage food product and has been informed the cottage food product is not licensed, regulated, or inspected.

7. "Transaction" means the exchange of buying and selling.

Direct producer to consumer sales of cottage food products.

1. Notwithstanding any other provision of law, a state agency or political subdivision may not require licensure, permitting, certification, inspection, packaging, or labeling that pertains to the preparation or sale of cottage food products under this section. This section does not preclude an agency from providing assistance, consultation, or inspection, upon request, of a producer.
2. Transactions under this section must be directly between the cottage food operator and the informed end consumer and be only for home consumption. Transactions may occur at a farm, ranch, farmers market, farm stand, home-based kitchen, or any other venue not otherwise prohibited by law or through delivery.
3. Transactions under this section may not:
 - a. Involve interstate commerce;
 - b. Be conducted over the internet or phone, through the mail, or by consignment;
 - c. Include the sale of uninspected products made from meat, except as provided under subdivision d; or
 - d. Include the sale of uninspected products made from poultry, unless:
 - (1) The cottage food operator slaughters no more than one thousand poultry raised by the cottage food operator during the calendar year;
 - (2) The cottage food operator does not buy or sell poultry products, except products produced from poultry raised by the cottage food operator; and
 - (3) The poultry product is not adulterated or misbranded.
4. Except for whole, unprocessed fruits and vegetables, food prepared by a cottage food operator may not be sold or used in any food establishment, food processing plant, or food store.
5. The cottage food operator shall inform the end consumer that any cottage food product or food sold under this section is not certified, labeled, licensed, packaged, regulated, or inspected.
6. This section does not change any requirement for brand inspection or animal health inspections.
7. A cottage food operator shall label all cottage food products that require refrigeration, such as baked goods containing cream, custard, meringue, cheesecake, pumpkin pie, and cream cheese, with safe handling instructions and a product disclosure statement indicating the product was transported and maintained frozen.
8. A cottage food operator shall display a consumer advisory sign at the point of sale or place a label on the cottage food product with the following statement:

"This product is made in a home kitchen that is not inspected by the state or local health department."

9. The state department of health or a local regulating authority may conduct an investigation upon complaint of an illness or environmental health complaint.

SECTION 3. AMENDMENT. Section 36-24-06 of the North Dakota Century Code is amended and reenacted as follows:

36-24-06. Prohibitions.

Unless otherwise provided in section 1 of this Act, a person may not:

1. Slaughter an animal or prepare an article usable as human food at any establishment preparing articles solely for intrastate commerce, unless the person complies with this chapter;
2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce any article that is usable as human food and which is adulterated or misbranded or any article that has not been inspected and passed under this chapter; or
3. Alter an article that is usable as human food while the article is being transported in intrastate commerce or held for sale after transportation, if the alteration is intended to cause or has the effect of causing the article to be adulterated or misbranded.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 192

SENATE BILL NO. 2136

(Senators Grabinger, Oehlke)
(Representatives Dobervich, Pollert, Satrom)

AN ACT to amend and reenact section 23-11-05 of the North Dakota Century Code, relating to the appointment of housing authority commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-11-05 of the North Dakota Century Code is amended and reenacted as follows:

23-11-05. Commissioners of authority - Appointment, qualifications, tenure, compensation.

When the governing body of a city adopts a resolution declaring there is need for a housing authority, the governing body promptly shall notify the mayor of the adoption. Upon receiving the notice, the mayor shall appoint no fewer than five persons as commissioners of the authority. When the governing body of a county adopts a resolution declaring there is need for a housing authority, the governing body shall appoint no fewer than five persons as commissioners of the authority. The commissioners ~~who are first~~ must be appointed ~~must be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of appointment, and after that time each commissioner must be appointed for a term of office for terms of five years,~~ except that all vacancies must be filled for the unexpired term. The terms of the commissioners must be staggered to ensure an approximately equal number of appointments expire each year and the term of one or more commissioners may initially be less than five years to accommodate the required staggering of terms. A commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner must be filed with the auditor of the city or county, as the case may be, and the certificate is conclusive evidence of the ~~due and proper~~ appointment of the commissioner. The governing body of the city or county shall establish the rate of compensation for commissioners and actual expenses incurred by commissioners may be reimbursed at the official reimbursement rates of the appointing authority.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 193

SENATE BILL NO. 2024

(Appropriations Committee)

AN ACT to amend and reenact subsection 2 of section 23-12-10.4, subsection 2 of section 54-27-25, and subsection 1 of section 54-59-22.1 of the North Dakota Century Code, relating to smoking prohibited signage, the tobacco settlement trust fund, and required use of centralized desktop support services; to repeal chapter 23-42 of the North Dakota Century Code, relating to the tobacco prevention and control program; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-12-10.4 of the North Dakota Century Code is amended and reenacted as follows:

2. The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this chapter may request from the ~~executive committee of the tobacco prevention and control advisory committee~~ state department of health the signs necessary to comply with the signage requirements of subsection 1.

⁸³ **SECTION 2. AMENDMENT.** Subsection 2 of section 54-27-25 of the North Dakota Century Code is amended and reenacted as follows:

2. There is created in the state treasury a tobacco prevention and control trust fund. The fund consists of the tobacco settlement dollars obtained by the state under section IX(c)(2) of the agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Interest earned on the fund must be credited to the fund and deposited in the fund. Moneys received into the fund are to be administered ~~by the executive committee for the purpose of creating and implementing the comprehensive plan. If in any biennium, the tobacco prevention and control trust fund does not have adequate dollars to fund a comprehensive plan, the treasurer shall transfer money from the water development trust fund to the tobacco prevention and control trust fund in an amount equal to the amount determined necessary by the executive committee to fund a comprehensive plan~~ as appropriated by the legislative assembly.

SECTION 3. AMENDMENT. Subsection 1 of section 54-59-22.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The following state agencies shall obtain centralized desktop support services from the information technology department:
 - a. Office of administrative hearings.

⁸³ Section 54-27-25 was also amended by section 39 of House Bill No. 1012, chapter 11, and section 13 of Senate Bill No. 2004, chapter 29.

- b. Office of the governor.
- c. Commission on legal counsel for indigents.
- d. Public employees retirement system.
- e. North Dakota university system office.
- f. Department of career and technical education.
- g. Department of financial institutions.
- h. Department of veterans' affairs.
- i. Aeronautics commission.
- ~~j. Tobacco prevention and control executive committee.~~
- ~~k. Council on the arts.~~
- ~~l.k. Agriculture commissioner.~~
- ~~m.l. Department of labor and human rights.~~
- ~~n.m. Indian affairs commission.~~
- ~~o.n. Protection and advocacy project.~~
- ~~p.o. Secretary of state.~~
- ~~q.p. State treasurer.~~
- ~~r.q. State auditor.~~
- ~~s.r. Securities department.~~

SECTION 4. REPEAL. Chapter 23-42 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 2017.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 194

SENATE BILL NO. 2231

(Senators J. Lee, Schaible)
(Representative Weisz)

AN ACT to create and enact a new section to chapter 23-16 and four new sections to chapter 26.1-47 of the North Dakota Century Code, relating to informed decisionmaking for choosing air ambulance service providers, preferred provider arrangement requirements for insurance prior authorization for air ambulance services, and air ambulance subscriptions; to amend and reenact section 26.1-47-01, subsection 6 of section 26.1-47-02, and section 26.1-47-07 of the North Dakota Century Code, relating to preferred provider organizations; to provide an effective date; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

Air ambulances - Informed Decisions - Publication.

1. Before a hospital refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the hospital shall inform the patient, or the patient's representative, of the air ambulance service provider's health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. A hospital is presumed in compliance with subsection 1 if the hospital provides the patient, or the patient's representative, the health insurance network status published by the insurance department under subsection 4.
3. A hospital is exempt from complying with this section if the hospital determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient.
4. At least quarterly, the insurance department shall publish on the insurance department's website data regarding the health insurance network status of each air ambulance service provider authorized to operate in the state.

SECTION 2. AMENDMENT. Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-01. Definitions.

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

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.

2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Commissioner" means the insurance commissioner of the state of North Dakota.
- 2-4. "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.
- 3-5. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- 4-6. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- 5-7. "Health care provider" means licensed providers of health care services in this state.
- 6-8. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
9. "In-network payment" means a full and final payment for air ambulance services pursuant to a network plan.
10. "Network" means a group of preferred providers providing services under a network plan.
11. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.
12. "Out-of-network" means a provider that is not providing the service under a network plan.
- 7-13. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-14. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter.

SECTION 3. AMENDMENT. Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-01. Definitions.

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

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.
2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Authorized representative" means:
 - a. A person to which a covered person has given express written consent to represent the covered person;
 - b. A person authorized by law to provide substituted consent for a covered person; or
 - c. If a covered person is unable to provide consent, the covered person's treating health care professional or a family member of the covered person.
4. "Balance billing" means the practice of an air ambulance provider billing for the difference between the air ambulance provider's charge and the health care insurer's allowed amount.
5. "Commissioner" means the insurance commissioner of the state of North Dakota.
- 2-6. "Covered person" means any person ~~an~~ individual on whose behalf the health care insurer is obligated to pay for or provide health care services.
- 3-7. "Facility" means an institution or other immobile health care setting providing physical, mental, or behavioral health care services.
8. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- 4-9. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- 5-10. "Health care provider" means licensed providers of health care services in this state.
- 6-11. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
- 7-12. "Network" means a group of preferred providers providing services under a network plan.
13. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person

to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.

14. "Out-of-network" means a provider that is not providing the service under a network plan.
15. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-16. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter.
17. "Prior authorization" means confirmation by the covered person's health care insurer that the air ambulance services sought to be provided by the air ambulance provider meet the criteria for coverage under the covered person's health benefit plan as defined by the provisions of the covered person's health benefit plan.

SECTION 4. AMENDMENT. Subsection 6 of section 26.1-47-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A health care insurer may not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the health carrier ~~that~~ care insurer which jeopardizes patient health or welfare.

SECTION 5. AMENDMENT. Section 26.1-47-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-07. Penalty.

The commissioner may levy an administrative penalty not to exceed ten thousand dollars for a violation of this chapter. ~~Any person who violates this chapter is guilty of a class A misdemeanor.~~

SECTION 6. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Air ambulances.

1. A health benefit plan may not be issued in this state unless the plan provides the reimbursement rate for out-of-network air ambulance provider services is equal to the average of the insurer's in-network rates for air ambulance providers in the state.
2. An insurer may not use the average of an insurer's in-network rates for air ambulance providers in the state in order to decrease current or future contractual rates between an insurer and an air ambulance provider.
3. For purposes of settling a claim made by the insured for air ambulance services, a payment made by an insurer under the plan in compliance with this section is deemed to be the same as an in-network payment and is considered a full and final payment by the insured for out-of-network air ambulance services billed to the insured.

4. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:
 - a. A specified disease, a specified accident, or accident-only coverage;
 - b. Credit;
 - c. Dental;
 - d. Disability;
 - e. Hospital;
 - f. Long-term care insurance as defined by chapter 26.1-45;
 - g. Vision care or any other limited supplemental benefit;
 - h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
 - i. Medicaid;
 - j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
 - k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
 - l. Automobile medical payment insurance.

SECTION 7. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Preferred provider arrangements - Requirements for accessing air ambulance providers.

1. In addition to the other preferred provider arrangement requirements under this chapter, a preferred provider arrangement must require the health care insurer and health care provider comply with this section.
2. Except as otherwise provided under this section, before a health care provider arranges for air ambulance services for an individual the health care provider knows to be a covered person, the health care provider shall request a prior authorization from the covered person's health care insurer for the air ambulance services to be provided to the covered person. If the health care provider is unable to request or obtain prior authorization from the covered person's health care insurer:
 - a. The health care provider shall provide the covered person or the covered person's authorized representative an out-of-network services written disclosure stating the following:
 - (1) Certain air ambulance providers may be called upon to render care to the covered person during the course of treatment;

- (2) These air ambulance providers might not have contracts with the covered person's health care insurer and are, therefore, considered to be out of network;
 - (3) If these air ambulance providers do not have contracts with the covered person's health care insurer, the air ambulance services will be provided on an out-of-network basis;
 - (4) A description of the range of the charges for the out-of-network air ambulance services for which the covered person may be responsible;
 - (5) A notification the covered person or the covered person's authorized representative may agree to accept and pay the charges for the out-of-network air ambulance services, contact the covered person's health care insurer for additional assistance, or rely on other rights and remedies that may be available under state or federal law; and
 - (6) A statement indicating the covered person or the covered person's authorized representative may obtain a list of air ambulance providers from the covered person's health care insurer which are preferred providers and the covered person or the covered person's representative may request those participating air ambulance providers be accessed by the health care provider.
- b. Before air ambulance services are accessed for the covered person, the health care provider shall provide the covered person or the covered person's authorized representative the written disclosure, as outlined by subdivision a and obtain the covered person's or the covered person's authorized representative's signature on the disclosure document acknowledging the covered person or the covered person's authorized representative received the disclosure document before the air ambulance services were accessed. If the health care provider is unable to provide the written disclosure or obtain the signature required under this subdivision, the health care provider shall document the reason, which may include the health and safety of the patient. The health care provider documentation satisfies the requirement under this subdivision.
3. This section does not:
- a. Preclude a covered person from agreeing to accept and pay the charges for the out-of-network services and not access the covered person's health care insurer's out-of-network air ambulance billing process described under this section.
 - b. Preclude a covered person from agreeing to accept and pay the bill received from the out-of-network air ambulance provider or from not accessing the air ambulance provider mediation process described under this section.
 - c. Regulate an out-of-network air ambulance provider's ability to charge certain fees for services or to charge any amount of fee for services provided to a covered person by the out-of-network air ambulance provider.

4. A health care insurer shall develop a program for payment of out-of-network air ambulance bills submitted under this section. A health benefit plan may not be issued in this state without the terms of the health benefit plan including the provisions of the health care insurer's program for payment of out-of-network air ambulance bills.
 - a. A health care insurer may elect to pay out-of-network air ambulance provider bills as submitted, or the health care insurer may elect to use the out-of-network air ambulance provider mediation process described in subsection 5.
 - b. This section does not preclude a health care insurer and an out-of-network facility air ambulance provider from agreeing to a separate payment arrangement.
5. A health care insurer shall establish an air ambulance provider mediation process for payment of out-of-network air ambulance provider bills. A health benefit plan may not be issued in this state if the terms of the health benefit plan do not include the provisions of the health care insurer's air ambulance provider mediation process for payment of out-of-network air ambulance provider bills.
 - a. A health care insurer's air ambulance provider mediation process must be established in accordance with mediation standards recognized by the department by rule.
 - b. If the health care insurer and the out-of-network air ambulance provider agree to a separate payment arrangement or if the covered person agrees to accept and pay the out-of-network air ambulance provider's charges for the out-of-network services, compliance with the air ambulance provider mediation process is not required.
 - c. A health care insurer shall maintain records on all requests for mediation and completed mediation under this subsection for one year and, upon request of the commissioner, submit a report to the commissioner in the format specified by the commissioner.
6. The rights and remedies provided under this section to covered persons are in addition to and may not preempt any other rights and remedies available to covered persons under state or federal law.
7. The department shall enforce this section and shall report a violation of this section by a facility to the state department of health.
8. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:
 - a. A specified disease, a specified accident, or accident-only coverage;
 - b. Credit;
 - c. Dental;
 - d. Disability;

- e. Hospital;
 - f. Long-term care insurance as defined by chapter 26.1-45;
 - g. Vision care or any other limited supplemental benefit;
 - h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
 - i. Medicaid;
 - j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
 - k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
 - l. Automobile medical payment insurance.
9. The commissioner may adopt rules to implement this section.

SECTION 8. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Rules.

If an action of Congress, the president of the United States, or a federal agency allows the state to regulate the rates, routes, or services of air ambulance providers, the commissioner may adopt rules consistent with the action taken.

SECTION 9. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Air ambulance subscription agreements - Prohibition.

An air ambulance provider, or an agent of an air ambulance provider, may not sell, solicit, or negotiate a subscription agreement or contract relating to services or the billing of services provided by an air ambulance provider. An air ambulance provider, or agent of an air ambulance provider, which violates this section is subject to a civil fine in an amount not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state.

SECTION 10. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE. Sections 2, 4, 5, and 6 of this Act become effective January 1, 2018. If section 6 of this Act is declared invalid, sections 3, 7, and 8 of this Act become effective on the date the insurance commissioner certifies the invalidity of section 6 to the secretary of state and the legislative council.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 195

SENATE BILL NO. 2156

(Senators Klein, Burckhard, Robinson)
(Representatives J. Nelson, Pollert, Weisz)

AN ACT to amend and reenact sections 23-20.2-02, 23-20.2-04, and 23-20.2-09 of the North Dakota Century Code, relating to definitions, permitting required for underground storage and retrieval or waste disposal facilities, and the disposal of radioactive waste material; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁴ **SECTION 1. AMENDMENT.** Section 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "High-level radioactive waste material" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, and other highly radioactive material, which contains fission products in sufficient concentrations to require permanent isolation under federal law, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste.
3. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
- ~~3-4.~~ "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.
- ~~4-5.~~ "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
- ~~5-6.~~ "Waste" includes liquid wastes, gaseous wastes, and solid wastes ~~as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.~~

⁸⁴ Section 23-20.2-02 was also amended by section 14 of Senate Bill No. 2327, chapter 199.

SECTION 2. AMENDMENT. Section 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-04. Permit required - Denial of permit - Review.

It is unlawful to commence any operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.
5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.
6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.
7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.
8. Any other information required by the commission.

The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law.

SECTION 3. AMENDMENT. Section 23-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-09. Deposit of high-level radioactive waste material - Legislative and local zoning approval required.

1. ~~No~~A person, ~~firm, corporation, limited liability company, or other legal entity~~ may not deposit, or cause or permit to be deposited in this state, any high-level radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly. ~~Radioactive waste material means waste either from the generation of electrical power through the utilization of~~

radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides. A county's zoning approval may not preclude the disposal development if approved by the legislative assembly, but may regulate the size, scope, and location.

2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for high-level radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the geological division of the department of mineral resources and the environmental health section of the state department of health, whether state and local level regulation of high-level radioactive waste disposal is consistent with applicable federal regulations; how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits; the mechanisms for calling a special session to approve the depositing of high-level radioactive waste material in the state and the notice of disapproval requirements under federal law; special laws, local laws, and existing code regarding the potential existence of a legislative veto over executive branch authority to determine the size, scope, and location of high-level radioactive waste material deposits in the state and any existing conflicts with the commerce clause; and the feasibility and desirability of developing new statutes and regulations for subsurface disposal of waste and the storage and retrieval of material. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 19, 2017

Filed April 19, 2017

CHAPTER 196**SENATE BILL NO. 2312**

(Senator Anderson)
(Representatives Heinert, Porter)

AN ACT to amend and reenact subsection 5 of section 23-27-02 and section 23-27-04.4 of the North Dakota Century Code, relating to emergency medical services professionals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 23-27-02 of the North Dakota Century Code is amended and reenacted as follows:

5. "Emergency medical services professional" means an individual licensed by the department ~~as an emergency medical technician basic, emergency medical technician intermediate, or emergency medical technician-paramedic~~ under this chapter.

SECTION 2. AMENDMENT. Section 23-27-04.4 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.4. Supervision of ~~certified or licensed emergency medical technician hospital personnel~~ services professionals - Scope of practice.

~~Certified or licensed emergency~~ Emergency medical technicians ~~intermediate and paramedics, services professionals~~ who are employed by a hospital may provide patient care within a scope of practice established by the department. Under this section, these emergency medical services professionals ~~are under the supervision of the hospital's nurse executive~~ must be supervised by a hospital designated physician, physician assistant, advanced practice registered nurse, or registered nurse.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 197

SENATE BILL NO. 2089

(Senator Anderson)
(Representative Holman)

AN ACT to amend and reenact section 23-34-01 of the North Dakota Century Code, relating to medical peer reviews.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-34-01 of the North Dakota Century Code is amended and reenacted as follows:

23-34-01. Definitions.

As used in this chapter:

1. "Health care organization" means:
 - a. A hospital;
 - b. A hospital medical staff;
 - c. A clinic;
 - d. A long-term or extended care facility;
 - e. An ambulatory surgery center;
 - f. An emergency medical services unit;
 - g. A physician;
 - h. A group of physicians operating a clinic or outpatient care facility;
 - i. A pharmacist;
 - j. A pharmacy;
 - k. An association or organization, whether domestic or foreign, of medical institutions or medical professionals;
 - l. A nonprofit corporation, whether domestic or foreign, that owns, operates, or is established by any entity set forth in subdivisions a through i;
 - m. Any combination of entities set forth in subdivisions a through j; ~~or~~
 - n. Any federally designated state peer review organization; or
 - o. Any state designated multi-disciplinary peer review entity designated to evaluate controlled substance practices in a referred case.
2. "Health care provider" means a physician or other ~~person~~individual licensed, certified, or otherwise authorized by the law of this state to provide health care services.

3. "Peer review organization" means:
 - a. A health care organization; or
 - b. A committee of a health care organization which:
 - (1) Is composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body; and
 - (2) Conducts professional peer review.
4. a. "Peer review records" means:
 - (1) Data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review organization as a part of any professional peer review, regardless of when the record was created; and
 - (2) Communications relating to a professional peer review, whether written or oral, between:
 - (a) Peer review organization members;
 - (b) Peer review organization members and the peer review organization's staff; or
 - (c) Peer review organization members and other ~~persons~~individuals participating in a professional peer review, including the ~~person~~individual who is the subject of the professional peer review.
- b. The term does not include original patient source documents.
5. "Professional peer review" means all procedures a peer review organization uses or functions it performs to monitor, evaluate, and take action to review the medical care provided to patients by health care organizations or health care providers and includes procedures or functions to:
 - a. Evaluate and improve the quality of health care;
 - b. Obtain and disseminate data and statistics relative to the treatment and prevention of disease, illness, or injury;
 - c. Develop and establish guidelines for medical care and the costs of medical care;
 - d. Provide to other affiliated or nonaffiliated peer review organizations information that is originally generated within the peer review organization for the purposes of professional peer review;
 - e. Identify or analyze trends in medical error, using among other things a standardized incident reporting system; and
 - f. Provide quality assurance.

Approved March 15, 2017

Filed March 16, 2017

CHAPTER 198

HOUSE BILL NO. 1210

(Representatives Porter, B. Anderson, Hogan, Meier, Nathe, J. Nelson)
(Senators Bowman, Campbell, Erbele, Wanzek)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to a cardiac ready community grant program; and to provide a continuing 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:

Cardiac ready community grant program.

The state department of health shall establish a cardiac ready community grant program. The primary purpose of the program is to support bystander, emergency responder, and community private public partnerships for strengthening community-based capacity for cardiac and stroke emergency response and risk reduction programs throughout the state. The program must build on and may not duplicate existing programs. The department shall award grants on a competitive basis based on criteria established by an advisory committee. To facilitate volume purchasing savings, the department may procure vendor rates and purchases, and grant the acquired elements to community programs.

Cardiac ready community grant program advisory committee - Duties.

1. The state department of health shall establish a cardiac ready community grant program advisory committee with members appointed by the state health officer. The advisory committee shall advise the department in the development of the cardiac ready community grant program and the membership must include a representative of the department, one cardiac ready community member, one representative of the emergency medical services association, one representative of the American heart association, one representative of the cardiac task force, one representative of the stroke task force, one representative of the emergency services advisory committee, one survivor advocate, and the state department of health emergency medical services and trauma medical director.
2. Members of the committee who are not state employees are entitled to mileage and expenses as provided by law for state officers and employees. A state employee who is a member of the committee must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.
3. The state department of health, with the advisory committee's involvement, shall provide assistance to:
 - a. Evaluate programs:

- b. Promote public awareness of core program elements;
 - c. Facilitate the coordination of program components with the local level;
 - d. Involve state agencies, law enforcement, and local government in the administration and management of the program; and
 - e. Assist the department in screening and implementing the grants.
4. The department may study the implementation of the program and shall recommend legislation the cardiac ready community grant program advisory committee considers appropriate to improve the program.

Gifts, grants, and donations - Continuing appropriation.

The state department of health may accept any gifts, grants, or donations, whether conditional or unconditional. The department or local grantees may contract public or private entities and may expend any available moneys to obtain matching funds for the purposes of this chapter. All moneys received by the state department of health as gifts, grants, or donations under this section are appropriated on a continuing basis to the department's operations fund for the purpose of funding the grant program.

Approved April 5, 2017

Filed April 5, 2017

ENVIRONMENTAL QUALITY

CHAPTER 199

SENATE BILL NO. 2327

(Senators Unruh, Armstrong, Wardner)
(Representatives Carlson, Kempenich, Porter)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24, title 23.1, and subdivision v of subsection 1 of section 54-06-04 of the North Dakota Century Code, relating to the creation of the department of environmental quality, the transfer of duties and responsibilities of the state department of health relating to environmental quality to the department of environmental quality, and biennial reports of the department of environmental quality; to amend and reenact section 4-35.2-01, subdivision b of subsection 5 of section 6-09.4-03, sections 11-33-01, 11-33-02.1, and 11-33-22, subdivision d of subsection 2 of section 12.1-06.1-01, sections 15-05-16, 20.1-13-05, 20.1-17-01, and 23-01-02, subsection 8 of section 23-01.3-01, sections 23-20.2-02, 23-20.2-03, and 24-03-23, subsection 5 of section 28-32-50, sections 38-08-04.5, 38-11.1-03.1, 38-11.1-04.1, and 38-11.2-02, subsection 12 of section 38-14.1-03, subsection 2 of section 38-14.1-21, sections 38-22-07, 38-22-12, 40-47-01, 43-18-02, 43-18-09, 43-35-03, 43-35-19, 43-35-19.1, 43-35-19.2, 43-35-20, and 43-35-23, subsection 11 of section 43-48-03, sections 43-62-01 and 43-62-03, subsection 1 of section 43-62-15, subsection 3 of section 44-04-18.4, section 44-04-32, subsection 1 of section 54-07-01.2, subsection 3 of section 54-12-08, section 54-44.3-30, subsection 33 of section 57-43.2-01, sections 58-03-11, 58-03-11.1, and 58-03-17, subsection 13 of section 58-06-01, section 61-04.1-04, subsections 1 and 2 of section 61-28-02, subsection 2 of section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2 of section 61-28.2-01, and sections 61-29-04, 61-33-09, and 61-35-24 of the North Dakota Century Code, relating to the transfer of duties and responsibilities of the state department of health to the department of environmental quality and the regulation of x-ray operators; to repeal chapters 19-10 and 19-16.1, sections 23-01-01.2, 23-01-04.1, 23-01-23, 23-01-30, and 23-01-36, chapters 23-20, 23-20.1, 23-20.3, 23-20.5, 23-25, 23-26, 23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26, and sections 61-28-03 and 61-28-05 of the North Dakota Century Code, relating to the transfer of duties and responsibilities of the state department of health to the department of environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for transition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STATE DEPARTMENT OF HEALTH TRANSITION OF ENVIRONMENTAL QUALITY FUNCTIONS. Notwithstanding any other provision of law, during the 2017-18 interim, the state department of health shall take all necessary and appropriate steps to transfer the authority, powers, and duties of the department related to environmental quality, as provided in this Act, to the department of environmental quality before the start of the sixty-sixth legislative assembly. Before July 1, 2019, the state department of health shall obtain the required approvals from,

and amend the necessary agreements with, federal agencies and other public and private entities to ensure the state will continue to meet all primacy requirements. When the chief of the environmental health section of the state department of health has assurance from the necessary federal agencies that the state will meet all the primacy requirements after the transfer of authority, powers, and duties to the new department, the chief shall certify the same to the legislative management. Until the time of the certification, the chief of the environmental health section of the state department of health has the authority to operate, administer, manage, and restructure the environmental health section, reassign employees of the section, and control the funds appropriated for the section, to operate the section in the most efficient manner possible. To the extent required by the environmental health section, the state department of health shall continue to provide support and administrative services to the section. The chief of the environmental health section may adopt rules under this Act contingent and effective upon the establishment of the department of environmental quality.

Upon the transition of the authority, powers, and duties of the state department of health to the department of environmental quality under this Act, any special funds or accounts administered or under the control of the state department of health which relate to environmental quality functions transferred to the department of environmental quality must be transferred to the administration and control of the department of environmental quality.

The legislative council may replace appropriate references to the state department of health in any measure enacted by the sixty-fifth legislative assembly with references to the department of environmental quality.

All orders, determinations, permits, grants, contracts, agreements, certificates, licenses, waivers, bonds, authorizations, and privileges relating to the functions transferred which have been lawfully issued or made before the date of the transition of functions, continue to be effective until revised, amended, repealed, or rescinded. The transition of functions does not abate any suit, action, or other proceeding lawfully commenced by, against, or before an entity affected by the transition of functions. A suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of an entity affected by the transition of functions.

SECTION 2. AMENDMENT. Section 4-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4-35.2-01. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.

1. The definitions contained in section 4-35-05 apply to this section.
2. In consultation with an advisory board consisting of the ~~state health officer~~ director of the department of environmental quality, director of the North Dakota state university extension service, two individuals representing agribusiness organizations, and two individuals representing farm organizations, all of whom must be selected by the agriculture commissioner, the commissioner shall continue to implement the project authorized by section 1 of chapter 77 of the 2001 Session Laws, which is known as project safe send. The purpose of the project is to:
 - a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide

- containers. The commissioner may limit the type and quantity of pesticides and pesticide containers acceptable for collection.
- b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
 3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.
 4. For services rendered in connection with the design and implementation of this project, the members selected by the commissioner are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

⁸⁵ **SECTION 3. AMENDMENT.** Subdivision b of subsection 5 of section 6-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

- b. The state department of health ~~environmental quality~~, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
 - (1) Operating any public water system that is subject to chapter 61-28.1.
 - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.

SECTION 4. AMENDMENT. Section 11-33-01 of the North Dakota Century Code is amended and reenacted as follows:

11-33-01. County power to regulate property.

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental

⁸⁵ Section 6-09.4-03 was also amended by section 1 of Senate Bill No. 2270, chapter 424.

concerns with the state department of health environmental quality as provided in section 23-20.3-03.1-23.1-04-04.

SECTION 5. AMENDMENT. Section 11-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

11-33-02.1. Farming and ranching regulations - Requirements - Limitations - Definitions.

1. For purposes of this section:
 - a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
 - b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
 - (1) The production of timber or forest products; or
 - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
 - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
 - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health environmental quality.
2. For purposes of this section, animal units are determined as follows:
 - a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
 - b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
 - c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
 - d. One cow-calf pair equals 1.0 animal unit;
 - e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;

- f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
 - g. One horse equals 2.0 animal units;
 - h. One sheep or lamb equals 0.1 animal unit;
 - i. One turkey equals 0.0182 animal unit;
 - j. One chicken, other than a laying hen, equals 0.008 animal unit;
 - k. One laying hen equals 0.012 animal unit;
 - l. One duck equals 0.033 animal unit; and
- m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
 4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.
 5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
 6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
 7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
 8.
 - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
 - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.

- c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section ~~23-25-1123.1-06-15~~.
- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

SECTION 6. AMENDMENT. Section 11-33-22 of the North Dakota Century Code is amended and reenacted as follows:

11-33-22. Regulation of concentrated animal feeding operations - Central repository.

1. Any zoning regulation that pertains to a concentrated animal feeding operation and ~~which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health~~environmental quality for inclusion in the central repository established under section ~~23-01-3023.1-01-10~~. ~~Any zoning regulation that pertains to concentrated animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.~~
2. For purposes of this section:
 - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
 - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

⁸⁶ **SECTION 7.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The department of environmental quality for a final applicant for or an employee specified in occupation with the department; an individual being investigated by the department; or, when requested by the department, an applicant for registration, certification, or licensure by the department.

SECTION 8. AMENDMENT. Subdivision d of subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of section

⁸⁶ Section 12-60-24 was also amended by section 1 of House Bill No. 1060, chapter 94, section 1 of Senate Bill No. 2131, chapter 96, section 1 of House Bill No. 1087, chapter 286, section 1 of House Bill No. 1132, chapter 95, and section 1 of Senate Bill No. 2129, chapter 409.

23-20.2-09 or rules adopted pursuant to that section which were in effect on January 1, 1997, or hazardous waste in willful violation of chapter 23-20.323.1-04 or the rules adopted pursuant to that chapter which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as was referenced in section 33-24-02-05 of the North Dakota Administrative Code.

SECTION 9. AMENDMENT. Section 15-05-16 of the North Dakota Century Code is amended and reenacted as follows:

15-05-16. Reports - State geologist - State department of health - Department of environmental quality.

The state geologist ~~or the~~ state department of health, or department of environmental quality, on the request of the board of university and school lands, shall visit any land leased under section 15-05-09 and shall make a report of the visit to the board. The state geologist ~~or the~~ state department of health, or department of environmental quality may not receive a fee for making the examination and report but must be paid necessary expenses incurred in connection ~~therewith~~with the examination.

SECTION 10. AMENDMENT. Section 20.1-13-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13-05. Equipment - Penalty.

1. Every vessel must have aboard:
 - a. If equipped with a marine toilet or other similar device for the disposition of sewage or other wastes, only that type of marine toilet equipped with a treatment device meeting standards established by the ~~state water pollution control board~~department of environmental quality. The ~~department of health~~environmental quality shall furnish a list of the types of treatment devices currently available and considered acceptable for use with marine toilets under this subdivision. No person owning or operating a vessel upon the waters of this state may use, operate, or permit the use or operation of any marine toilet or similar device unless it is approved under this subdivision. No person may discharge into the waters of this state, directly or indirectly from a vessel, any untreated sewage or other wastes. No container of untreated sewage or other wastes may be placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of this state from a vessel in such a manner or quantity as to create a nuisance or health hazard, or pollute such waters.
 - b. Such additional equipment designed to promote the safety of navigation and of persons as the game and fish department may find appropriate and for which it has provided in its rules.
2. No person may operate or give permission for the operation of a vessel that is not equipped as required by this section.
3. Any person who violates this section is guilty of a class 2 noncriminal offense.

SECTION 11. AMENDMENT. Section 20.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

20.1-17-01. Prevention and control of aquatic nuisance species.

The director, to prevent and control aquatic nuisance species, shall:

1. Prepare a statewide management plan for aquatic nuisance species to be approved by the governor.
2. Organize an aquatic nuisance species committee, as provided for in the statewide management plan, composed of the director or the director's designee; representatives of the agriculture commissioner, state water commission, parks and recreation department, ~~state department of health~~department of environmental quality, and tourism division; up to five private entities or individuals; and a representative of tribal entities. The director or the director's designee is the chairman of the aquatic nuisance species committee.
3. Develop and adopt the state's list of aquatic nuisance species after consulting with the aquatic nuisance species committee. The list must be updated annually.
4. Provide for a permitting system to import listed aquatic nuisance species into or move those species within the state.
5. Develop rules to prevent the movement of aquatic nuisance species into or within the state. In addition to requirements under chapter 28-32, the department shall conduct a cost-benefit analysis for any rule proposed for adoption under this chapter.
6. Conduct aquatic nuisance species education and prevention efforts.
7. Provide for the partnership of the federal government, state agencies, and private or public organizations to fund aquatic nuisance species prevention efforts.

SECTION 12. AMENDMENT. Section 23-01-02 of the North Dakota Century Code is amended and reenacted as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings.

The health council consists of ~~eleven~~nine members appointed by the governor ~~in the following manner: including~~ four persons from the health care field, and five persons representing consumer interests, ~~one person from the energy industry, and one from the manufacturing and processing industry.~~ The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive sixty-two dollars and fifty cents as compensation per day and their necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 while attending

council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

SECTION 13. AMENDMENT. Subsection 8 of section 23-01.3-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Public health authority" means the state department of health, department of environmental quality, a local public health unit, and any authority or instrumentality of the United States, a tribal government, a state, or a political subdivision of a state, a foreign nation, or a political subdivision of a foreign nation, which is:
 - a. Primarily responsible for public health matters; and
 - b. Primarily engaged in activities such as injury reporting, public health surveillance, and public health investigation or intervention.

⁸⁷ **SECTION 14. AMENDMENT.** Section 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
3. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-2923.1-08.
4. "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
5. "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in section 23-29-0323.1-08-02 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.

SECTION 15. AMENDMENT. Section 23-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

⁸⁷ Section 23-20.2-02 was also amended by section 1 of Senate Bill No. 2156, chapter 195.

23-20.2-03. Jurisdiction of the industrial commission.

The commission has jurisdiction and authority and is charged with the responsibility to enforce the provisions of this chapter. This chapter does not apply to any activity regulated under chapters ~~23-29~~23-1-08, 38-08, 38-12, 61-28, and 61-28.1. The commission acting through the office of the state geologist has the authority:

1. To require:
 - a. Identification of ownership of all facilities and equipment used for the underground storage and retrieval of material and waste disposal.
 - b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing, free of charge, of samples, core chips, and complete cores, when requested, in the office of the state geologist.
 - c. The drilling, boring, excavating, and construction of facilities in a manner to prevent contamination and pollution of surface and ground water sources and the environment.
 - d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules of the commission relating to the underground storage and retrieval of material and waste disposal.
 - e. Metering or other measuring of all material injected, emplaced, stored, disposed into, or retrieved from any facility regulated by this chapter.
 - f. That every person who operates a facility for the underground storage and retrieval of material or for waste disposal in this state shall keep and maintain complete and accurate records of the quantities and nature of material stored, retrieved, or disposed of, which records must be available to the commission or its agents at all times, and that every such person file with the commission such reports as it may prescribe.
 - g. That upon termination of the operation of any facility or activity regulated by this chapter, the operator of such facility shall restore the surface as nearly as possible to its original condition and productivity.
2. To regulate:
 - a. The drilling, boring, excavating, and construction of all underground storage, retrieval, and waste disposal facilities.
 - b. Operations to assure the optimum performance of all facilities regulated by this chapter.
3. To limit and prescribe the nature, quantity, and source of materials to be stored in, whether as waste or otherwise, or retrieved from any facility regulated by this chapter.
4. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes of this chapter.

The jurisdiction granted the commission by this chapter is not exclusive and does not affect the jurisdiction of other governmental entities.

SECTION 16. Chapter 23.1-01 of the North Dakota Century Code is created and enacted as follows:

23.1-01-01. Department of environmental quality established - Director appointment.

The department of environmental quality is established and is the primary state environmental agency. The governor shall appoint a director of the department who shall serve at the pleasure of the governor. The director must have a bachelor of science degree or higher from an accredited college in a natural or physical science area of study or be a registered professional engineer. The governor shall seek to appoint a director with at least seven years of environmental health or relevant engineering work experience. Three years of the work experience must include administrative and management responsibilities. Direct work experience in North Dakota is preferred. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director. The position of director of the department is not a classified position, and the governor shall set the salary of the director within the limits of legislative appropriations.

23.1-01-02. Environmental review advisory council - Members, powers, and duties.

1. The environmental review advisory council is established to advise the department of environmental quality in carrying out its duties. The council consists of the state engineer, state geologist, and director of the game and fish department, who serve as ex officio members, and ten members appointed by the governor. The director of the department of environmental quality or the director's designee shall serve as the executive secretary for the council. The appointed members must be:
 - a. A representative of county or municipal government;
 - b. A representative of manufacturing or agricultural processing;
 - c. A representative of the solid fuels industry;
 - d. A representative of the liquid and gas fuels industry;
 - e. A representative of crop agriculture;
 - f. A representative of the waste management industry;
 - g. A representative with an agronomy or soil sciences degree;
 - h. A representative of the thermal electric generators industry;
 - i. A representative of the environmental sciences; and
 - j. A representative of the livestock industry.
2. Each appointive member of the council shall serve a four-year term. The governor may fill any vacancy in the membership of the council, and may

remove an appointed member of the council for cause. The council members shall select a chairman from among the council members.

3. Council members must be reimbursed by the department of environmental quality for necessary travel and other expenses incurred in the performance of official duties.
4. The council shall hold at least two meetings per year and any other meetings deemed necessary by the chairman or a majority of the council.
5. The council shall:
 - a. Review and make recommendations to the department of environmental quality regarding rules and standards relating to environmental quality and the duties of the department. The department may not take final action on any rule or standard without first consulting the council.
 - b. Consider any other matter related to the purposes of this title and chapters 61-28, 61-28.1, and 61-28.2 the council deems appropriate and make any recommendation on its own initiative to the department of environmental quality concerning the administration of this title and chapters 61-28, 61-28.1, and 61-28.2.

23.1-01-03. Director - Powers and duties.

The director of the department of environmental quality shall:

1. Enforce all rules adopted by the department;
2. Hire employees as necessary to carry out the duties of the department and director;
3. Organize the department in the most efficient and effective manner;
4. Maintain, in conjunction with the state department of health, a laboratory to carry out the necessary tests and examinations for purposes of this title, and establish a fee schedule for the tests and examinations;
5. Issue bulletins, news releases, or reports as necessary to inform the public of environmental hazards;
6. Establish rules necessary for maintaining sanitation, including rules for approving plans for water works and sewage systems;
7. Maintain a central environmental laboratory and, if necessary, branch laboratories for the standard function of diagnostic, sanitary, and chemical examinations; and
8. Any other action, including the collection and distribution of environmental quality data, necessary and appropriate for the administration of this title and chapters 61-28, 61-28.1, and 61-28.2.

23.1-01-04. Rulemaking authority - Limitations.

1. Except as provided in subsection 2, the department of environmental quality may not adopt any rule for the purpose of the state administering a program

under the federal Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.]; federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C. 11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent than corresponding federal regulations that address the same circumstances. In adopting the rules, the department may incorporate by reference corresponding federal regulations.

2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1, only if the department makes a written finding after public comment and hearing and based upon evidence in the record, that corresponding federal regulations are not adequate to protect the public health and the environment of the state. Those findings must be supported by an opinion of the department referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the department's conclusions.
3. If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or rules where there are no corresponding federal regulations, the department shall review and revise those rules to comply with this section within nine months of the filing of the petition.
4. Any person issued a notice of violation, or a denial of a permit or other approval, based upon a rule of the department which is more stringent than a corresponding federal regulation or where there is no corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the basis and to the extent the department's rule violates this section by imposing requirements more stringent than corresponding federal regulations, unless the more stringent rule of the department has been adopted in compliance with this section.

23.1-01-05. Department of environmental quality authorized to transfer future accumulated fees.

The department of environmental quality may from time to time transfer unclaimed fees on deposit with the Bank of North Dakota or other authorized depository to the state general fund when the unclaimed status has existed for a period of at least three years.

23.1-01-06. Department to employ waste management facility inspectors.

The department of environmental quality shall employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each commercial, nonpublicly owned waste management disposal or incineration facility that accepts more than twenty-five thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. This section does not apply to any energy conversion facility or coal mining operation that disposes of its solid waste onsite. The department may require inspectors for those facilities that accept less than twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct

regular inspections of the operating procedure and conditions of the facility and report the findings to the department on a regular basis. If an inspector discovers a condition at a facility that is likely to cause imminent harm to the health and safety of the public or environment, the inspector shall notify the department. The department shall proceed as provided by sections 23.1-08-19 and 23.1-08-20.

The department shall assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses associated with employing an inspector for the facility. The owner or operator of the facility shall submit the fee to the department by July first of each year. Any fees collected must be deposited in the department's operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. If a facility begins operation after July first of any year, the owner or operator of the facility shall pay to the department a prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the waste management facility account may be spent by the department within the limits of legislative appropriation.

23.1-01-07. Permit or investigatory hearings - Exemption from chapters 28-32 and 54-57.

A permit hearing conducted for purposes of receiving public comment or an investigatory hearing conducted under chapters 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, and 61-28.1 is not an adjudicative proceeding under chapter 28-32 and is not subject to the requirements of chapter 54-57.

23.1-01-08. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 19-13.1, 19-18, or 19-20.1 must be performed by the department of environmental quality for the agriculture commissioner at no charge.

23.1-01-09. Department of environmental quality - Indirect cost recoveries.

Notwithstanding section 54-44.1-15, the department of environmental quality may deposit indirect cost recoveries in its operating account.

23.1-01-10. Zoning regulation of concentrated animal feeding operations - Central repository.

The department of environmental quality shall establish, operate, and maintain an electronically accessible central repository for all county and township zoning regulations that pertain to concentrated animal feeding operations. The county auditor of a county and a township clerk of a township having a zoning regulation that pertains to concentrated animal feeding operations shall file the regulation with the department of environmental quality for inclusion in the central repository.

23.1-01-11. Appeal from permit proceedings.

An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit

application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised on any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

23.1-01-12. Rules.

The department may adopt rules consistent with national or regional standards which relate to the promotion of plastic bottle recycling and the maintenance of safe plastic bottle recycling practices in the state.

23.1-01-13. Contracts for inspections.

The department may contract with public health units and other appropriate entities to conduct inspections on behalf of the department or provide other services.

SECTION 17. Chapter 23.1-02 of the North Dakota Century Code is created and enacted as follows:

23.1-02-01. Definitions.

For the purposes of this chapter:

1. "Department" means the department of environmental quality.
2. "Radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.
3. "Radiation machine" means any device that produces radiation when the associated control devices are operated.
4. "Radioactive material" means any material, solid, liquid, or gas, that emits radiation spontaneously.

23.1-02-02. Registration agency.

The department is designated as the agency to receive registration applications and to issue certificates of registration.

23.1-02-03. Registration required.

Each manufacturer, processor, and refiner of radioactive isotopes and each hospital, clinic, manufacturing establishment, research or educational institution, agricultural experiment station or center, processing mill, or other institution or place of business or process in which radiation is produced or radioactive materials are used, manufactured, processed, packaged, refined, produced, disposed, or

concentrated shall register with the department. To register, each manager or officer in charge of any institution or establishment concerned with radioactive materials shall obtain a registration form from the department, complete it, and return it to the department.

23.1-02-04. Certificate of registration.

Upon satisfactory completion and submission of the registration form, the department shall issue the applicant a certificate of registration. A completed registration form must provide sufficient information to determine whether the health of the public or persons working in the applicant establishment may be adversely affected by using, manufacturing, processing, packing, refining, disposing, producing, or concentrating of radioactive isotopes and materials.

23.1-02-05. Penalty.

Any person required to register under section 23.1-02-03 that fails to register and obtain a certificate of registration is guilty of a class A misdemeanor.

SECTION 18. Chapter 23.1-03 of the North Dakota Century Code is created and enacted as follows:

23.1-03-01. Definitions.

For the purposes of this chapter:

1. "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and the tailings or wastes produced by the extraction, or concentration of uranium or thorium from any ore processed primarily for its source material content.
2. "Commission" means United States nuclear regulatory commission or any successor.
3. "Department" means the department of environmental quality.
4. "General license" means a license effective under rules adopted by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.
5. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.
6. "Person" has the same meaning as under section 1-01-49, except it does not mean the commission or federal government agencies licensed by the commission.
7. "Radioactive material" means any solid, liquid, or gas that emits ionizing radiation spontaneously.
8. "Registration" means submitting a satisfactory registration form and receiving a certificate of registration under chapter 23.1-02.

9. "Special nuclear material" means:
- a. Plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material the department declares by rule to be special nuclear material after the commission has determined the material to be such, but does not include source material; or
 - b. Any material, other than source material, that is artificially enriched by plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material the department declares by rule to be special nuclear material after the commission has determined the material to be such.
10. "Specific license" means a license issued after application, to process, generate, dispose, use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.
11. "Source material" means uranium, thorium, or any other material the department declares by rule to be source material after the commission has determined the material to be such; or ores containing one or more of those materials, in such concentration as the department declares by rule to be source material after the commission has determined the material in such concentration to be source material.
12. "Surety" means cash deposits, surety bonds, certificates of deposit, deposits of government securities, letters of credit, and other surety mechanisms deemed acceptable by the department.

23.1-03-02. State radiation control agency.

The department of environmental quality shall administer the statewide licensing and regulatory radiation program under this chapter.

23.1-03-03. Powers and duties of the department.

For the protection of the public health and safety, the department shall:

1. Evaluate hazards associated with the use of sources of ionizing radiation by inspection and other means.
2. Conduct programs compatible with federal programs for the licensing and regulation of byproduct, source, special nuclear materials, and other radioactive materials.
3. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
4. Administer the statewide licensing and regulatory radiation program.

23.1-03-04. Licensing and registration of sources of ionizing radiation.

1. The department shall adopt rules for the department to provide general or specific licensing of persons to process, generate, dispose, use, manufacture, produce, acquire, own, receive, possess, or transfer byproduct, source,

special nuclear material, and other radioactive materials occurring naturally or produced artificially, or devices or equipment utilizing such materials. The rules must allow the department to amend, suspend, and revoke licenses.

2. The department may exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements under this section and in chapter 23.1-02 when the department makes a finding that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

23.1-03-05. Custody of disposal sites.

1. Any radioactive materials license issued or renewed for any activity that results in processing, generating, or disposing of source material, byproduct material, or other radioactive material occurring naturally or produced artificially must contain any terms and conditions the department finds necessary to assure that, prior to termination of the license:
 - a. The licensee will comply with any decontamination, decommissioning, and stabilization standards prescribed by the department, which must be equivalent to or more stringent than those of the commission for sites, structures, and equipment used in conjunction with the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially; and
 - b. Ownership of any disposal site and source material, byproduct material, or other radioactive material occurring naturally or produced artificially which resulted from the licensed activity must, subject to subsection 2, be transferred to the United States if provided by federal law, or this state if the state exercises the option to acquire land used for the disposal of the source material, byproduct material, or other radioactive material occurring naturally or produced artificially.
2. a. The department shall require by rule or order that before the termination of any license, title to the land and any interests in the land, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States or land already owned by the United States or by the state, used for the disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially pursuant to a license, must be transferred to the United States if provided by federal law, or this state, unless the commission and the department determine before the termination that transfer of title is not necessary to protect the public health, safety, or welfare, or to minimize danger to life or property.
 - b. If transfer to the state of title to the land, source material, byproduct material, or other radioactive material occurring naturally or produced artificially is required, the department shall maintain the material and land in a manner that will protect the public health, safety, and the environment.
 - c. The department may undertake any monitoring, maintenance, and emergency measures necessary to protect the public health and safety for materials and property for which it has assumed custody under this chapter.

- d. The transfer of title to land or source material, byproduct material, or other radioactive material occurring naturally or produced artificially, to the state does not relieve any licensee of liability for any fraudulent or negligent acts done prior to the transfer.
 - e. Material and land transferred to either the United States or the state under this section must be transferred without cost to the United States or the state other than administrative and legal costs incurred by the United States or the state in carrying out the transfer.
3. Land used for the disposal of technologically enhanced naturally occurring radioactive material is not subject to subsection 2.

23.1-03-06. Surety requirements.

1. The department shall establish by rule standards and instructions it deems necessary or appropriate to ensure:
 - a. The licensee will provide adequate surety for the completion of all requirements established by the department for the decontamination, decommissioning, and stabilization of sites, structures, and equipment used in conjunction with the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially; and
 - b. If the department determines any long-term maintenance and monitoring is necessary, the licensee will make available the funds required for the necessary maintenance and monitoring, before termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially.
2. Any funds for long-term site surveillance and control must be available to the state if title and custody of source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site is transferred to the state under subsection 1 of section 23.1-03-05. The funds must be transferred to the United States if title and custody of the source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site is transferred to the United States upon termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially. These funds include sums collected for long-term surveillance and if necessary, maintenance. The funds do not include moneys held as surety where no default had occurred and the reclamation or other bonded activity has been performed.
3. If the department requires a surety for stabilization or funds for long-term surveillance or maintenance, the amounts must be sufficient to ensure compliance with the standards established by the commission and the department pertaining to financial arrangements to ensure adequate stabilization and long-term management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site.

23.1-03-07. Procedural requirements.

In licensing and regulating the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially, the department shall provide:

1. In the cases of licenses:
 - a. An opportunity, after public notice, for written comments and a public hearing, with a transcript.
 - b. A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period, and which is subject to judicial review.
 - c. For each licensed activity that has a significant impact on the human environment, a written analysis prepared by the department which must be available to the public before commencement of hearings, of the impact of the licensed activity on the environment. The analysis must include:
 - (1) An assessment of the radiological and nonradiological impacts to the public health.
 - (2) An assessment of any impact on any waterway and ground water.
 - (3) Consideration of alternatives to the activities to be conducted.
 - (4) Consideration of the long-term impacts of the licensed activities.
 - d. A prohibition of any major construction related to the licensed activities before completing the action under this subsection.
 - e. An assurance that management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially is carried out in conformance with applicable standards adopted by the department, the commission, and the United States environmental protection agency.
2. In the case of rulemaking:
 - a. An opportunity for public participation through written comments or a public hearing.
 - b. An opportunity for judicial review.

23.1-03-08. Additional authorities.

The department may require persons exempt from licensing to conduct monitoring, perform remedial work, and to comply with any other measures the department deems necessary or desirable to protect health or minimize danger to life or property.

23.1-03-09. Fees deposited in operating fund.

The department, by rule, may prescribe and provide for the payment and collection of reasonable fees to issue licenses and registration certificates. The fees

must be based on the anticipated cost of filing and processing the application, of taking action on the requested license or registration certificate, and of conducting an inspection program to determine compliance or noncompliance with the license or registration certificate.

Any moneys collected for permit or registration fees must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23.1-03-10. Federal-state agreements.

1. The governor, on behalf of this state, may enter agreements with the federal government for discontinuance of certain responsibilities of the federal government with respect to sources of ionizing radiation and the assumption of the responsibilities by the state.
2. Any person who, on the effective date of an agreement under subsection 1, possesses a license issued by the federal government must be deemed to possess the same license issued under this chapter, and the license must expire either ninety days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

23.1-03-11. Administrative procedures and judicial review.

Any proceeding under this chapter to issue or modify rules, including emergency orders relating to control of sources of ionizing radiation; grant, suspend, revoke, or amend any license; or determine compliance with rules of the department must be conducted in accordance with chapter 28-32. If an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring action necessary to meet the emergency be taken. Notwithstanding any provision of this chapter, the order must be effective immediately. A person to which the order is directed shall comply with the order immediately, but may apply to the department for a hearing. The department shall provide the hearing within ten days of the application. On the basis of such hearing, the emergency order must be continued, modified, or revoked within thirty days after such hearing.

23.1-03-12. Injunction proceedings.

Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of this chapter, or any rule or order issued under this chapter, the department may initiate an action in the name of the state enjoining the acts or practices, or requesting an order directing compliance. Upon a showing by the department that the person has engaged or is about to engage in the acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

23.1-03-13. Prohibited uses.

It is unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless registered with or licensed by the department under this chapter.

23.1-03-14. Impounding of materials.

In the event of an emergency, the department may impound or order the impounding of sources of ionizing radiation in the possession of any person not equipped to observe or which fails to observe the provisions of this chapter or any rules issued under this chapter.

23.1-03-15. Penalties.

1. Any person violating this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
2. Any person willfully violating any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
3. Any person willfully making any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or falsifying, tampering with, or willfully rendering inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

SECTION 19. Chapter 23.1-04 of the North Dakota Century Code is created and enacted as follows:

23.1-04-01. Declaration of purpose.

The department of environmental quality shall administer this chapter to:

1. Protect human health and the environment from the effects of the improper, inadequate, or unsafe past or present management of hazardous waste and underground storage tanks.
2. Establish a program to regulate hazardous waste from the time of generation through transportation, storage, treatment, and disposal.
3. Promote reduction of hazardous waste generation, reuse, recovery, and treatment as preferable alternatives to landfill disposal.
4. Assure the safe and adequate management of hazardous waste with a minimum of hazardous waste disposal sites within the state.
5. Establish a program to regulate underground storage tanks.
6. Promote reduction of surface and ground water contamination resulting from leaking underground storage tanks.

23.1-04-02. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Commercial facility" means all contiguous land, structures, appurtenances, and improvements on the land used for treatment and disposal of hazardous waste received from offsite generators.
2. "Department" means the department of environmental quality.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so the solid waste or hazardous waste or any hazardous constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.
4. "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several contiguous treatment, storage, or disposal operational units.
5. "Generator" means any person, by site, through act or process produces hazardous waste or first causes a hazardous waste to become subject to regulation.
6. "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that:
 - a. Because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the department may:
 - (1) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - (2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or
 - b. Is identified by the mechanisms established in this chapter, including those that exhibit extraction procedure toxicity, corrosivity, ignitability, or reactivity.
7. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
8. "Manifest" means the document used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during transportation from the site of generation to the site of storage, treatment, or disposal.
9. "Owner" means, in the case of an underground storage tank:
 - a. In use after November 7, 1984, any person that owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.

- b. In use before November 8, 1984, but no longer in use after that date, any person that owned or operated such a tank immediately before the discontinuation of the tank's use.
10. "Regulated substance" means:
- a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], as amended, but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.], as amended.
- b. Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit [16 degrees Celsius] and fourteen and seven-tenths pounds [6.66 kilograms] per square inch [6.45 square centimeters] absolute).
11. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.
12. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or transported and retained elsewhere.
13. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.
14. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
15. "Treatment, storage, or disposal facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal, and may include a facility at which hazardous waste has been generated.
16. "Underground storage tank" means any one or combination of underground tanks, including underground pipes connected to an underground tank, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to it, is ten percent or more beneath the surface of the ground. Exemptions from this definition and rules adopted under this chapter include:
- a. Farm or residential tanks of one thousand one hundred gallons [4163.94 liters] or less capacity used for storing motor fuel for noncommercial purposes.
- b. Tanks used for storing heating oil for consumptive use on the premises where stored.
- c. Septic tanks.

- d. A pipeline facility, including gathering lines, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129, 49 U.S.C. 60101 et seq.].
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - e. Surface impoundments, pits, ponds, or lagoons.
 - f. Storm water or wastewater collection systems.
 - g. Flow-through process tanks.
 - h. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
 - i. Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated on or above the surface of the floor.
17. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from commercial, industrial, or other chemical, biological, or physical activities. It does not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows or industrial discharges, which are point sources subject to permits under section 402 of the Federal Clean Water Act [Pub. L. 95-217; 22 U.S.C. 1251 et seq.], as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 [Pub. L. 83-703; 42 U.S.C. 2011 et seq.], as amended, or to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 30 U.S.C. 1201 et seq.].

23.1-04-03. Powers and duties of the department.

The department shall administer and enforce this chapter. The department shall:

- 1. Administer the state hazardous waste management and underground storage tank programs under this chapter.
- 2. Survey hazardous waste generation and management practices in the state.
- 3. Adopt, modify, repeal, and enforce rules governing the management of hazardous waste and underground storage tanks.
- 4. Enter agreements with other local, state, or federal agencies regarding responsibilities for regulating hazardous wastes and underground storage tanks to promote consistency in enforcement and avoid duplication in regulation.

23.1-04-04. Institutional controls, responsibility exemptions, and regulatory assurances for contaminated properties - Continuing appropriation.

1. The department may establish institutional controls or give site-specific responsibility exemptions or regulatory assurances to owners, operators, or lenders, under this section for real property contaminated by regulated substances, other pollution, or contamination regulated by the department under this chapter or chapter 61-28. To qualify for a site-specific responsibility exemption, the owner of the property, or the political subdivision establishing institutional controls under this section through its zoning authority, shall:
 - a. Delineate the vertical and horizontal extent and concentration of the pollution or contamination in soil and ground water;
 - b. Identify potential persons or receptors that may be impacted by the pollution or contamination, evaluate the potential for movement or migration of the pollution or contamination and potential pathways of exposure, and identify potential health or environmental impacts to persons or receptors based on the proposed property use;
 - c. Identify the past and current uses of the property, the current uses of contiguous properties, and zoning restrictions or regulations that apply to the property and contiguous properties;
 - d. Identify any surface water or ground water uses, or ground water wells, that may be impacted by the pollution or contamination;
 - e. Agree to comply with and complete any remediation or monitoring plan agreed to or ordered by the department as a condition of receiving a site-specific responsibility exemption, including monitoring of natural attenuation of pollution or contamination;
 - f. If remediation or monitoring of pollution or contamination is being conducted by a responsible party or governmental body other than the landowner or operator, agree to allow access for all monitoring or remedial activities reasonably related to the identified pollution or contamination;
 - g. Agree to any other reasonable institutional controls necessary to protect public health and welfare from pollution or contamination on the property or to satisfy environmental standards enforced by the department; and
 - h. Agree to comply with all institutional controls, letters of no further remediation, letters of no further action, or letters of regulatory assurance established or instituted under this section as a condition of receiving a property-specific or site-specific responsibility exemption or regulatory assurance.
2. "Institutional controls" are restrictions on the use and management of real property, including buildings or fixtures, which contain or prevent migration of regulated substances or other pollution or contamination, or protect receptors from exposure or the threat of exposure to regulated substances or other pollution or contamination. Institutional controls may apply during environmental remediation activities, or to residual regulated substances, pollutants, or other pollution or contamination or their byproducts that may remain on property after active environmental remediation activities are

concluded or while natural attenuation of regulated substances or other pollution or contamination is occurring.

3. Institutional controls may be established by the department as follows:
 - a. When an area made subject to institutional controls involves two or more property owners and an area larger than either one city block or ten acres [4.05 hectares], the department and the political subdivision having zoning authority over the property may agree to institutional controls relating to the identified area impacted by the pollution or the contamination. Before the institutional controls become effective, the controls must be the subject of a public hearing and be established in the same manner as zoning regulations are established by that political subdivision. The political subdivision is responsible for providing all notices under this subdivision, but any public hearing must be held jointly by the political subdivision and the department.
 - b. The department also may establish institutional controls by agreement to an environmental covenant with the owner of the real property. Before agreeing to any environmental covenants under this subdivision, all contiguous landowners to the property to which the covenants will attach must be notified by certified mail or by service by publication as provided in the North Dakota Rules of Civil Procedure. An environmental covenant must state that it is an environmental covenant that runs with the land, have a legally sufficient description of the real property subject to the covenant, describe activity or use limitations and terms of access for any monitoring or remediation, identify every holder who is a grantee of the covenant, be signed by every holder and the owner of the property before a notary public, and describe the name and location of any administrative record for the environmental response or remediation identified for the property under subsection 1. All environmental covenants must be filed with the county recorder of the county in which the property is located.
4. After completion of the assessments and requirements of subsection 1, the department may issue a letter of no further remediation or a letter of no further action to a property owner when an environmental remediation is completed on the site or property, or when no institutional controls are necessary to protect public health or welfare or to come into compliance with an environmental standard that has been violated and later corrected on the site or property.
5. Notwithstanding any institutional controls established for any real property, the department has access for inspection and enforcement for environmental violations as provided by law.
6. If there is any additional discharge or release of a regulated substance, pollutant, or contaminant on the property subject to institutional controls or regulatory exemptions that intermingles with the delineated pollution or contamination identified under subsection 1, or if the owner or operator of the property manages the property in a manner that causes the contamination to migrate to a neighboring contiguous property or results in the exposure of contaminants to receptors on the property, then institutional controls or regulatory exemptions established under this section are voidable by the department after a public investigatory hearing by giving written notice to the political subdivision and the current owner of the property subject to the

- institutional controls, as well as any lender holding a lien on the property identified under subsections 8 and 9. Culpability of the owner or operator of the property for any new or additional discharge, release, or movement of pollution or contamination, as well as responsibility for any offsite discharge or release or culpability for exposure of onsite or offsite receptors to pollution or contamination, must be considered by the department in determining whether to void any institutional controls, and any final determination by the department to void an institutional control is subject to review under chapter 28-32. If the institutional control is an environmental covenant established under subdivision b of subsection 3, the written notice voiding the environmental covenant as well as a copy of the covenant being voided by the department must be filed with the county recorder of the appropriate county.
7. Institutional controls may also be terminated or amended at any time by written agreement between the department, the relevant political subdivision, the owner of the property, or other body or person subject to the institutional controls, as well as any identified lender, after giving notice as described in subsection 3. Letters of no further remediation, of no further action, or regulatory assurance may be amended by written agreement of the participating parties.
 8. 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. The 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.
 9. Participation by a lender in an agreement under this section may not be construed as management of the property under chapter 32-40.1. Lenders that participate in an agreement under this section may not be held responsible for any environmental remediation on the site or property except as provided in subsection 3 of section 32-40.1-02. As part of an agreement under subsection 8, the department may issue a letter of regulatory assurance to a lender which states that the lender is not responsible for environmental remediation on the property or site, and which addresses other issues relating

to responsibility, notice, violation of agreement under subsection 8 by the owner or operator, default, or other matters affecting potential environmental liability, investment, or redevelopment. A responsibility exemption of regulatory assurance given or granted to a lender under this section also applies to a lender's transferees or assigns, if the party has had no prior involvement with or responsibility for the site of the environmental release, and uses and manages the property after the transfer or assignment in compliance with institutional controls or other conditions established under this section and the requirements of this chapter and chapter 61-28.

10. The department may adopt rules to implement this section. The department may assess administrative fees in an amount and manner established by rule against responsible parties. In addition, by agreement of the participants, under subsection 8 the department may collect an administrative fee for a specific site or project to address the department's costs and expenses at that site or project, in an amount agreed to under subsection 8, or may collect an administrative fee in an amount set by rule from a person making a request for a responsibility exemption or regulatory assurance under this section. Any administrative fees collected under this section must be deposited by the department in a separate account in the department's operating fund and used only for administration of remediation activities under this chapter or chapter 61-28 and moneys deposited in this account are appropriated to the department on a continuing basis. Administrative fees may not be collected out of federal moneys or against the petroleum tank release compensation fund.
11. The administrator of the petroleum tank release compensation fund under chapter 23.1-12 may request recovery of expenditures the administrator has made at a remediation site from the separate account in the department's operating fund from fees collected under this section if recovery may not be made from a responsible party or as provided in chapter 23.1-12. If the department determines sufficient funds are available without compromising the remediation project at the site, moneys in the separate account may be used to reimburse the petroleum tank release compensation fund for expenditures the administrator has made at the remediation site.
12. All letters of partial or complete exemption from responsibility for remediation or further action issued by the department under this section may be revoked by the department if any condition of the letters is violated; if institutional controls on the property are not complied with; or if the person, governmental body, or entity violates any provision of this chapter or chapter 61-28.
13. "Environmental covenant" means a covenant running with the land as established under this section.
14. "Natural attenuation" means the reduction in the mass or concentration in soils or ground water of a regulated substance, pollutant, contaminant, and the products into which a substance breaks down, due to naturally occurring physical, chemical, and biological processes, without human intervention. "Enhanced natural attenuation" means the enhancement of natural attenuation at a site by the addition of chemicals, biota, or other substances or processes. "Monitored natural attenuation" means the monitoring of natural attenuation as it occurs. The department may consider natural attenuation or enhanced or monitored natural attenuation as remediation alternatives for a site when pollution or contamination on a site or property does not pose a

threat to human health or the environment, and reasonable safeguards are established under this section or other provisions of state or federal law.

15. "Regulatory assurance" means an assurance issued by the department concerning enforcement relating to existing contamination or pollution on a property or site based on compliance with conditions stated in a letter of regulatory assurance. A regulatory assurance is not voidable under subsection 6.
16. "Responsibility exemption" means a partial or complete exemption from responsibility for remediation or further action on a contaminated property or at a contaminated site based on compliance with the conditions identified in a letter of no further remediation or a letter of no further action. A responsibility exemption is voidable only against a person that violates an institutional control or a condition of a letter of no further action or no further remediation, or that is responsible for a new or additional release or migration of a regulated substance or pollutant on the property or site, or whose actions or negligence cause the violation, release, or migration.
17. "Responsible party" means a person that causes or contributes to an onsite or offsite release or discharge, or which is responsible for an illegal or unpermitted storage, of a pollutant or regulated substance in violation of this chapter or chapter 61-28, that results in the contamination or pollution of a property or site. "Potentially responsible party" means a person identified as a possible cause of, or contributor to, contamination or pollution on a site or property.
18. This section does not affect the authority of the department, the state, or its political subdivisions to exercise any powers or duties under state law with respect to any new or additional discharge or release or threatened discharge or release of a pollutant or regulated substance on a property or site regulated under this section, or the right of the department or any other person to seek legal or equitable relief against a person not subject to a liability protection provided under this section.

23.1-04-05. Hazardous waste regulations.

Under chapter 28-32, the department shall adopt rules:

1. For determining whether any waste is hazardous.
2. Prescribing procedures for generators of hazardous waste.
3. For the issuance of permits for the storage, treatment, and disposal of hazardous waste in an environmentally sound manner, utilizing best scientific and engineering judgment.
4. Prescribing procedures under which the department shall issue, renew, modify, suspend, revoke, or deny permits required by this chapter. The rules must provide that no permit may be revoked until the department has provided the affected party with written notice of the intent of the department to revoke the permit, the reasons for the revocation, and an opportunity for a hearing.
5. For the location, design, construction, operation, and maintenance of treatment, storage, and disposal facilities.

6. For the transportation, containerization, and labeling of hazardous wastes which must be consistent with those issued by the United States department of transportation and the public service commission and department of transportation.
7. Prescribing procedures and requirements for a manifest system.
8. Prescribing procedures and requirements for the following:
 - a. Recordkeeping.
 - b. Reporting.
 - c. Sampling.
 - d. Performing analysis.
 - e. Monitoring.
9. Requiring the owner or operator of any hazardous waste treatment, storage, or disposal facility to demonstrate evidence of financial responsibility in the form and amount determined by the department to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent damage to human health and the environment.
10. Any other rules necessary to carry out the purposes of this chapter.

23.1-04-06. Underground storage tank regulations.

Under chapter 28-32, the department shall adopt rules:

1. For maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
2. For maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. For reporting of any releases and corrective action taken in response to a release from an underground tank.
4. For taking corrective action in response to a release from an underground storage tank.
5. For the closure of tanks to prevent releases of regulated substances into the environment.
6. For maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.
7. Establishing standards for installation of underground storage tanks.

8. Establishing standards for construction and performance of new underground storage tanks.
9. For notifying the department or designated local agency of the existence of any operational or nonoperational underground storage tank.
10. For a permit fee system to own, install, or operate an underground storage tank.

However, regulations adopted by the department may not be more stringent than applicable requirements of the federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.] and the federal Energy Policy Act of 2005 [Pub. L. 109-58; 42 U.S.C. 15801 et seq.] in effect on August 1, 2007.

23.1-04-07. Municipal underground storage tank ordinances.

A county, city, or township may not enact and enforce an underground storage tank ordinance if the ordinance is more stringent than this chapter and the rules authorized to be adopted under this chapter.

23.1-04-08. Permits.

1. A person may not construct, substantially alter, or operate any hazardous waste treatment, storage, or disposal facility, nor may any person treat, store, or dispose of any hazardous waste without obtaining a permit from the department for the facility or activity. A hazardous waste treatment, storage, or disposal facility may not be issued a permit unless the applicant demonstrates to the satisfaction of the department that a need for the facility exists and the facility can comply with all applicable requirements under this chapter.
2. Permits must contain the terms and conditions the department deems necessary.
3. Permits must be issued for a period of five years.
4. Any permit issued under this section may be revoked by the department according to the rules adopted under subsection 3 of section 23.1-04-05 at any time if the permittee fails to comply with the terms and conditions of the permit, or with applicable requirements under this chapter.
5. If a permit applicant proposes modifications of an existing facility or the department determines modifications are necessary to conform to the requirements established under this chapter, the permit must specify the time allowed to complete the modifications.
6. a. Before the issuing of a permit the department shall:
 - (1) Publish in the official county newspaper of the county in which the proposed facility will be located and in major local newspapers of general circulation and broadcast over local radio stations notice of the department's intention to issue the permit; and
 - (2) Transmit in writing notice of the department's intention to issue the permit to each unit of local government having jurisdiction over the area in which the facility is proposed to be located and to each state

agency having any authority under state law regarding the construction or operation of the facility.

b. If within forty-five days the department receives written notice of opposition to the department's intention to issue a permit and a request for a hearing, or if the department determines on its own initiative, the department shall hold an informal public hearing, including an opportunity for presentation of written and oral views, on whether the department should issue a permit for the proposed facility. Whenever possible the department shall schedule the hearing at a location convenient to the nearest population center to the proposed facility. Notice of the hearing must be published in the manner provided in subdivision a. The notice must contain the date, time, place, and subject matter of the hearing.

7. Any facility required to have a permit under this chapter is exempt from the permit requirements of chapter 23.1-08.

23.1-04-09. Fees - Deposit in operating fund.

The department by rule may provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates for registering, licensing, or permitting hazardous waste generators, transporters, and treatment, storage, recycling, or disposal facilities. The permit or registration certificate fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit licensing or registration fees must be deposited in the department operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

23.1-04-10. Commercial facility permits and ordinances.

1. Counties and cities may issue permits for commercial facilities pursuant to section 23.1-04-08 and may enact and enforce commercial facility ordinances if the ordinances are equal to or more stringent than this chapter and the rules adopted under this chapter.

2. In addition to the requirements for obtaining a permit under this chapter, a person may not construct, substantially alter, or operate any commercial facility nor may any person dispose of any hazardous waste without first obtaining a permit from the department and from the county, or a city if the commercial facility is located or proposed to be located within the territorial zoning authority of the city. The department, in conjunction with the governing body of the county or city in which the commercial facility is located or proposed to be located, shall hold a public hearing in the manner provided in section 23.1-04-08.

23.1-04-11. Disclosure of information before issuance, renewal, transfer, or major modification of permit.

Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact

in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation under the laws of any state or of the United States which has been entered against the applicant within five years before the date of submission of the application.

23.1-04-12. Inspections - Right of entry.

To develop or enforce any rule authorized by this chapter or enforce a requirement of this chapter, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

1. Enter any place, facility, or site at which wastes or substances that the department has reason to believe may be hazardous or regulated are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled.
2. Inspect and obtain samples of any waste or substance that the department has reason to believe may be hazardous or regulated, including samples from any vehicles in which wastes are being transported as well as samples of any containers or labels.
3. Inspect and copy any records, reports, information, or test results relating to the purposes of this chapter.

23.1-04-13. Monitoring, analysis, and testing - Civil penalty.

1. If the department determines, upon receipt of any information, that:
 - a. The presence of any hazardous waste, hazardous constituent, or regulated substance at a facility or site at which hazardous waste or regulated substance is, or has been, stored, treated, or disposed of; or

- b. The release of any such waste or regulated substance from a facility or site may present a substantial hazard to human health or the environment, the department may issue an order requiring the owner or operator of the facility or site to conduct any monitoring, testing, analysis, and reporting with respect to the facility or site which the department deems reasonable to ascertain the nature and extent of the hazard.
2. In the case of any facility or site not in operation at the time a determination is made under subsection 1 with respect to the facility or site, if the department finds the owner or operator of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste or regulated substance at the facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of the facility or site which could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection 1.
3. A person that violates this section is subject to a civil penalty of five thousand dollars per day of violation.

23.1-04-14. Imminent hazard.

Upon receipt of information that the past or present handling, storage, transportation, treatment, or disposal of any waste or regulated substance may present an imminent and substantial endangerment to health or the environment, the department may take emergency action necessary to protect health or the environment.

23.1-04-15. Enforcement penalties and citizen participation.

1. If the department finds a person is in violation of a permit, rule, standard, or requirement of this chapter, the department may issue an order requiring the person to comply with the permit, rule, standard, or requirement, and the department may bring an action for a civil or criminal penalty, including an action for injunctive relief. An action under this chapter must be brought in the district court for the county in which the violation occurred or in which the party in violation has the party's residence or principal office in the state.
2. A person that violates a provision of this chapter or any rule, standard, or permit condition adopted under this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars per day of violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments.
3. A person that knowingly violates a provision of this chapter or a rule, standard, or permit condition adopted under this chapter, or that knowingly makes a false statement or representation in documentation required by this chapter, is subject to a fine not to exceed twenty-five thousand dollars per day of violation, to imprisonment for a period not to exceed one year, or both.
4. A person that knowingly violates a provision of this chapter in a manner that manifests extreme indifference to human life and places an individual in imminent danger of death or serious bodily injury, is subject to a fine not to exceed fifty thousand dollars per day of violation, to imprisonment for a period not to exceed two years, or both.

5.
 - a. A person having an interest that may be adversely affected by a violation of this chapter may commence a civil action to compel compliance with this chapter, or a rule, order, or permit issued under this chapter.
 - b. Notice of the violation must be given to the department and to an alleged violator sixty days before commencement of a citizen suit brought under this subsection.
 - c. A person with an interest that may be adversely affected by a violation of this chapter may intervene as a matter of right in a civil action brought by the department to require compliance with this chapter.
6. An administrative action brought under this chapter must be conducted in accordance with North Dakota Administrative Code article 33-22.

23.1-04-16. Applicability.

1. The hazardous waste provisions of this chapter do not apply to the following wastes to the degree to which they are exempted from regulation by sections 3001(b)(2) and 3001(b)(3)(A) of the Resource Conservation and Recovery Act, as amended by the Solid Waste Disposal Act Amendments of 1980 [Pub. L. 96-482; 42 U.S.C. 6901 et seq.]:
 - a. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.
 - b. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion or gasification of coal or other fossil fuels.
 - c. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
 - d. Cement kiln dust waste.
2. If a waste disposal site for any of the wastes specified in subsection 1 is to be closed, the owner or operator shall file a plat of the disposal site with the recorder of each county in which the facility is located, together with a description of the wastes placed in the site.

23.1-04-17. Limited liability for subsequent owners of property.

1. Notwithstanding any other provision of law and except as expressly provided by federal law, a person that acquires property is not liable for any existing hazardous waste or substance on the property if:
 - a. The person acquired the property after the disposal or placement of the hazardous waste or substance on, in, or at the property, and at the time the person acquired the property that person did not know and had no reason to know any hazardous waste or substance was disposed of on, in, or at the property;
 - b. The person is a governmental entity that acquired the property by escheat, by tax sale, foreclosure, or through any other involuntary transfer or

- acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or
- c. The person acquired the property by inheritance or bequest and that person did not know and had no reason to know that any hazardous waste or substance was disposed of on, in, or at the property.
 2. To establish the person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this requirement, a court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property as uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate inspection.
 3. A person that has acquired real property may establish a rebuttable presumption that the person has made all appropriate inquiry if the person establishes that, immediately before or at the time of acquisition, the person performed an investigation of the property, conducted by an environmental professional, to determine or discover the obviousness of the presence or likely presence of a release or threatened release of hazardous waste or substances on the property.
 4. The presumption does not arise unless the person has maintained a compilation of the information reviewed in the course of the investigation.
 5. This section does not diminish the liability of any previous owner or operator of the property which would otherwise be liable under this chapter, and nothing in this section affects the liability under this chapter of a person that, by any act or omission, caused or contributed to the release or threatened release of a hazardous waste or substance the subject of the action relating to the property.
 6. As used in this section, environmental professional means an individual, or entity managed or controlled by an individual, who, through academic training, occupational experience, and reputation, such as engineers, environmental consultants, and attorneys, can objectively conduct one or more aspects of an environmental investigation.

SECTION 20. Chapter 23.1-05 of the North Dakota Century Code is created and enacted as follows:

23.1-05-01. Southwestern low-level radioactive waste disposal compact.

The southwestern low-level radioactive waste disposal compact is entered with all jurisdictions legally joining the compact, in the form substantially as follows:

ARTICLE I - COMPACT POLICY AND FORMATION

The party states hereby find and declare all of the following:

1. The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act, Public Law 96-573, as amended by the Low-Level Radioactive

Waste Policy Amendments Act of 1985 [42 U.S.C. 2021b - 2021j], has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

2. It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.
3. It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.
4. It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.
5. Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

ARTICLE II - DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

1. "Commission" means the southwestern low-level radioactive waste commission established in Article III of this compact.
2. "Compact region" or "region" means the combined geographical area within the boundaries of the party states.
3. "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if the state hosts a disposal facility.
4. "Generate", when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.
5. "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.
6. "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.
7. "Host state" means a party state in which a regional disposal facility is located or being developed. California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.

8. "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.
9. "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:
 - a. The waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11e(2) of the Atomic Energy Act of 1954 [42 U.S.C. 2014(e)(2)].
 - b. The waste is not uranium mining or mill tailings.
 - c. The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 [42 U.S.C. 2021c(b)].
 - d. The waste is not an alpha-emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.
10. "Major generator state" means a party state that generates ten percent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party state other than California generates at least ten percent of the total amount, "major generator state" means the party state that is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.
11. "Management" means collection, consolidation, storage, packaging, or treatment.
12. "Operator" means a person who operates a regional disposal facility.
13. "Party state" means any state that has become a party in accordance with Article VII of this compact.
14. "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.
15. "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee observes, monitors, and carries out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.
16. "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.
17. "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the

continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.

18. "Transporter" means a person who transports low-level radioactive waste.
19. "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

ARTICLE III - THE COMMISSION

1. There is hereby established the southwestern low-level radioactive waste commission.
 - a. The commission consists of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.
 - b. The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one percent of the membership on the commission. The host state's additional members must be appointed by the host state governor and confirmed by the host state senate.

If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.
 - c. If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who must be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to subdivision d.
 - d. The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of county commissioners of the host county.
 - e. In recommending and appointing the host county member pursuant to subdivision d, the board of county commissioners and the governor shall give first consideration to recommending and appointing the members of the board of county commissioners in whose district the regional disposal facility is located or being developed. If the board of county commissioners of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.
 - f. The host county member is subject to confirmation by the senate of the host state and serves at the pleasure of the governor of the host state.

2. The commission is a legal entity separate and distinct from the party states and is liable for its actions. Members of the commission are not personally liable for actions taken in their official capacity. The liabilities of the commission are not to be deemed liabilities of the party states.
3. The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action must be governed by the laws of the host state. The commission must be located in the capital city of the host state in which the regional disposal facility is located.
4. The commission's records are subject to the host state's public records law, and the meetings of the commission must be open and public in accordance with the host state's open meeting law.
5. The commission members are public officials of the appointing state and are subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members must be compensated according to the appointing state's law.
6. Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this capacity, a majority of the total number of votes on the commission is necessary for the commission to take any action.
7. The commission has all of the following duties and authority:
 - a. The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.
 - b. The commission shall meet at least once a year and otherwise as business requires.
 - c. The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge must be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and must be collected by the operator of the disposal facility.

The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge must be sufficient to establish and maintain a reasonable level of funds for all of the following purposes:

- (1) The activities of the commission and commission staff.
- (2) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This paragraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

- (3) A local government reimbursement fund, for the purpose of reimbursing the local governmental entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.
- d. The surcharges imposed by the commission for purposes of paragraphs 2 and 3 of subdivision c and surcharges pursuant to subdivision c of subsection 5 of Article IV must be transmitted on a monthly basis to the host state for distribution to the proper accounts.
- e. The commission shall establish a fiscal year that conforms to the fiscal years of the party states to the extent possible.
- f. The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission must be conducted by an independent certified public accountant, and the audit report must be made a part of the annual report of the commission.
- g. The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.
- h. The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal government or a state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this subdivision and the identity of the donor or grantor must be detailed in the annual report of the commission.

However, the host state is entitled to receive, for the uses specified in subparagraph E of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph A of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code.

- i. The commission shall submit communications to the governors and to the presiding officers of the legislative assemblies of the party states regarding the activities of the commission, including an annual report to be submitted on or before January fifteenth of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods that are alternative technologies to the shallow land burial of low-level radioactive waste.
- j. The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.
- k. The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.

- l. The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.
- m. The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.
- n. The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission may bind a party state.
- o. The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.
- p. The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.
- q. The commission must be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.
- r. The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.
- s. The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:
 - (1) The commission approves the importation agreement by a two-thirds vote of the commission.
 - (2) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.
- t. The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes is effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.
- u. The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

- v. The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

ARTICLE IV - RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

1. There must be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.
2. Low-level radioactive waste generated within the region must be disposed of at regional disposal facilities and each party state must have access to any regional disposal facility without discrimination.
3. a. Upon the effective date of this compact, California must serve as the host state and must comply with the requirements of subsection 5 for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration is at the option of California.

If California does not extend this obligation, the party state, other than California, which is the largest major generator state, must then serve as the host state for the second regional disposal facility.

The obligation of a host state which hosts the second regional disposal facility must also run for thirty years from the date the second regional disposal facility begins operations.

- b. The host state may close its regional disposal facility when necessary for public health or safety.
4. The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 [42 U.S.C. 2021b - 2021j].
5. A host state shall do all of the following:
 - a. Cause a regional disposal facility to be developed on a timely basis.
 - b. Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.
 - c. Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:
 - (1) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.
 - (2) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.

- (3) Assure that charges are assessed without discrimination as to the party state of origin.
 - d. Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.
 - e. The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.
- 6. Each party state is subject to the following duties and authority:
 - a. To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures must include all of the following requirements:
 - (1) Periodic inspections of packaging and shipping practices.
 - (2) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.
 - (3) Appropriate enforcement actions with respect to violations.
 - b. A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by subdivision a.
 - c. To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions include requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibiting future shipments to the regional disposal facility.
 - d. Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.
 - e. Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.
 - f. Each party state may rely on the good-faith performance of the other party states to perform those acts that are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.
 - g. Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

- h. Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states may be disposed of in the regional disposal facility, except as provided in subdivision s of subsection 7 of Article III.
- i. Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to paragraph 2 of subdivision c of subsection 7 of Article III, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state is liable for any harm or damage resulting from a regional facility not located within the state.

ARTICLE V - APPROVAL OF REGIONAL FACILITIES

A regional disposal facility must be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensing, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

ARTICLE VI - PROHIBITED ACTS AND PENALTIES

1. No person may dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in subdivisions t and u of subsection 7 of Article III.
2. No person may dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in subdivisions s, t, and u of subsection 7 of Article III.
3. Violations of this section must be reported to the appropriate law enforcement agency within the party state's jurisdiction.
4. Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

ARTICLE VII - ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

1. Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislative assemblies of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subsection, as a member of this compact.
2. Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state

becoming a party state by executive order ceases to be a party state upon adjournment of the first general session of its legislative assembly convened after the executive order is issued, unless before the adjournment the legislative assembly enacts this compact.

3. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal does not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subsection, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact.

If the host state withdraws from the compact, the withdrawal does not become effective until five years after the effective date of the repealing legislation.

4. A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by this compact.
5. This compact takes effect upon the enactment by statute by the legislatures of California and at least one other eligible state and upon the consent of Congress and remains in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

ARTICLE VIII - CONSTRUCTION AND SEVERABILITY

1. This compact must be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state may not be infringed unnecessarily.
2. This compact does not affect any judicial proceeding pending on the effective date of this compact.
3. If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity does not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.
4. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:
 - a. The nuclear regulatory commission pursuant to the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].
 - b. An agreement state under section 274 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2021].
5. Nothing in this compact confers any new authority on the states or commission to do any of the following:

- a. Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.
- b. Regulate health, safety, or environmental hazards from source, byproduct, or special nuclear material.
- c. Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

SECTION 21. Chapter 23.1-06 of the North Dakota Century Code is created and enacted as follows:

23.1-06-01. Definitions.

For purposes of this chapter:

1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any combination of solid, liquid, gas, or odorous substance.
2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
3. "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which may not be exceeded.
4. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, handling, or disposal of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.
6. "Asbestos contractor" means any person that contracts to perform asbestos abatement for another.
7. "Asbestos worker" means any individual engaged in the abatement of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material, except for individuals engaged in abatement at their private residence.
8. "Department" means the department of environmental quality.
9. "Emission" means a release of air contaminants into the ambient air.
10. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.

11. "Friable asbestos material" means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry.
12. "Indirect air contaminant source" means any facility, building, structure, or installation, or any combination that can reasonably be expected to cause or induce emissions of air contaminants.
13. "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or more than one-half percent by weight.

23.1-06-02. Declaration of public policy and legislative intent.

It is the public policy of this state and the legislative intent of this chapter to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property, to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience of the people, and to facilitate the enjoyment of the natural attractions of this state.

23.1-06-03. Environmental review advisory council - Public hearing and rule recommendations.

The environmental review advisory council shall hold a public hearing to consider and recommend the adoption, amendment, or repeal of rules and standards under this chapter. Notice of the public hearing must be given by publication in each of the official county newspapers within the state on at least two occasions, one week apart, the last publication being at least thirty days before the first hearing. The hearing must be held in the state capitol, and interested parties may present witnesses and other evidence relevant to proposed rules and standards under this chapter. The council shall consider any other matters related to this chapter and may make recommendations to the department concerning the administration of this chapter.

23.1-06-04. Power and duties of the department.

1. The department shall develop and coordinate a statewide program of air pollution control. To accomplish this, the department shall:
 - a. Encourage the voluntary cooperation of persons to achieve the purposes of this chapter.
 - b. Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and the several parts thereof.
 - c. Encourage and conduct studies, investigations, and research relating to air pollution and its causes, effects, prevention, abatement, and control.
 - d. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
 - e. Issue orders necessary to effectuate the purposes of this chapter and enforce the orders by all appropriate administrative and judicial procedures.

- f. Provide rules relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air contaminant source which the department determines will prevent the attainment or maintenance of any ambient air quality standard, and require that before commencing construction or modification of any such source, the owner or operator shall submit the information necessary to permit the department to make this determination.
 - g. Establish ambient air quality standards for the state which may vary according to appropriate areas.
 - h. Formulate and adopt emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards.
 - i. Hold hearings relating to the administration of this chapter, and compel the attendance of witnesses and the production of evidence.
 - j. Require the owner or operator of a regulated air contaminant source to establish and maintain records; make reports; install, use, and maintain monitoring equipment or methods; sample emissions in accordance with those methods at designated locations and intervals, and using designated procedures; and provide other information as may be required.
 - k. Provide by rules a procedure for handling applications for a variance for any person that owns or is in control of any plant, establishment, process, or equipment. The granting of a variance is not a right of the applicant but must be in the discretion of the department.
 - l. Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended, the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. The rules may include enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives, including fees, marketable permits, and auctions of emissions rights, as provided by the Act. The department shall develop and implement the federal programs if the department determines that doing so benefits the state.
 - m. Provide by rules a program for implementing lead-based paint remediation training, certification, and performance requirements in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.
2. After consultation with the advisory council, the department may adopt, amend, and repeal rules under this chapter.

23.1-06-05. Licensing of asbestos and lead-based paint contractors and certification of asbestos and lead-based paint workers.

1. The department shall administer and enforce a licensing program for asbestos contractors and lead-based paint contractors and a certification program for asbestos workers and lead-based paint workers. To do so, the department shall:

- a. Require training of, and to examine, asbestos workers and lead-based paint workers.
 - b. Establish standards and procedures for the licensing of contractors, and the certification of asbestos workers engaging in the abatement of friable asbestos materials or nonfriable asbestos materials that become friable during abatement, and establish performance standards for asbestos abatement. The performance standards will be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended.
 - c. Establish standards and procedures for licensing contractors and certifying lead-based paint workers engaging in the abatement of lead-based paint, and establish performance standards for lead-based paint abatement in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.
 - d. Issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, renew certificates, and suspend or revoke certificates for cause after notice and opportunity for hearing.
 - e. Establish an annual fee and renewal fees for licensing asbestos contractors and lead-based paint contractors and certifying asbestos and lead-based paint workers, and establish examination fees for asbestos and lead-based paint workers under section 23.1-06-10. The annual, renewal, and examination fees for lead-based contractors and workers may not exceed those charged to asbestos contractors and workers.
 - f. Establish indoor environmental nonoccupational air quality standards for asbestos.
 - g. Adopt and enforce rules as necessary for the implementation of this section.
2. For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the federal Clean Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

23.1-06-06. Sulfur dioxide ambient air quality standards more strict than federal standards prohibited.

The department may not adopt ambient air quality rules or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and refineries when there are no corresponding federal rules or standards. Any ambient air quality standards that have been adopted by the department for sulfur dioxide that are more strict than federal rules or standards under the federal Clean Air Act, or for which there are no

corresponding federal rules or standards, are void as to coal conversion facilities and petroleum refineries. However, the department may adopt rules for dealing with exposures of less than one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory program for dealing with short-term exposures to sulfur dioxide that may be established under the federal Clean Air Act. Any intervention levels or standards set forth in the rules may not be more strict than federal levels or standards recommended or adopted under the federal program. In adopting the rules, the department shall follow all other provisions of state law governing the department's adoption of ambient air quality rules when there are no mandatory corresponding federal rules or standards.

23.1-06-07. Requirements for adoption of air quality rules more strict than federal standards.

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.
2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information not available from the department when it gave its notice of hearing, the department shall give a new notice of hearing not less than ninety days before the hearing which clearly identifies the additional or amended studies, analyses, opinions, data, or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.
3. In this section:
 - a. "Cost-benefit analysis" means both the analysis and the written document that contains:
 - (1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs. The quantification or numerical estimate must use comparable assumptions, including time periods, specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.

(2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department may not rely on cost, benefit, or risk assessment information that is not accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.

b. "Risk assessment" means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources, and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:

(1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.

(2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.

(3) The major sources of uncertainties in the hazard identification, dose-response, and exposure assessment portions of the risk assessment.

(4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department, in preparing the risk assessment, shall:

(a) Rely only upon environmental protection agency-approved air dispersion models.

(b) Identify the assumptions, inferences, and models that materially affect the outcome.

(c) Explain the basis for any choices.

(d) Identify any policy decisions or assumptions.

(e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.

(f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.

(5) The range and distribution of exposures and risks derived from the risk assessment.

- c. The risk assessment and cost-benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the environmental review advisory council.
4. This section applies to any petition submitted to the department under section 23.1-01-04 which identifies air quality rules or standards affecting coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to section 23.1-01-04. This section also applies to any petitions filed under section 23.1-01-04 affecting coal conversion facilities or petroleum refineries that are pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent section 23.1-01-04.1 conflicts with this section, the provisions of this section govern. This section does not apply to existing rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to new rules governing those standards.

23.1-06-08. Classification and reporting of air pollution sources.

1. After consultation with the environmental review advisory council the department, by rule, may classify air contaminant sources according to levels and types of emissions and other criteria that relate to air pollution, and may require reporting for any class. Classifications made under this subsection may apply to the state as a whole or to any designated area of the state, and must be made with special reference to effects on health, economic, and social factors and physical effects on property.
2. A person operating or responsible for the operation of air contaminant sources of any class for which reporting is required shall make reports containing information the department deems relevant to air pollution.

23.1-06-09. Permits or registration.

1. A person may not construct, install, modify, use, or operate an air contaminant source designated by regulation, capable of causing or contributing to air pollution, either directly or indirectly, without a permit from the department or in violation of any conditions imposed by the permit.
2. The department shall provide for the issuance, suspension, revocation, and renewal of permits that it requires under this section.
3. The department may require applications for permits to be accompanied by plans, specifications, and other information it deems necessary.
4. Possession of an approved permit or registration certificate does not relieve any person of the responsibility to comply with applicable emission limitations or with any other law or rule, and does not relieve any person from the requirement to possess a valid contractor's license issued under chapter 43-07.

5. The department by rule may provide for registration and registration renewal of certain air contaminant sources in lieu of a permit.
6. The department may exempt by rule certain air contaminant sources from the permit or registration requirements in this section when the department makes a finding the exemption will not be contrary to section 23.1-06-02.

23.1-06-10. Fees - Deposit in operating fund.

The department by rule may prescribe and provide for the payment and collection of reasonable fees for permits and registration certificates. The fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting an inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit or registration fees must be deposited in the department operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23.1-06-11. Right of onsite inspection.

1. Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which an air contaminant source is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and related rules. If requested, the owner or operator of the premises must receive a report setting forth all facts found which relate to compliance status.
2. The department may conduct tests and take samples of air contaminants, fuel, process material, and other materials that may affect emission of air contaminants from any source, and may have access to and copy any records required by department rules to be maintained, and may inspect monitoring equipment located on the premises. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and other safe and proper sampling, and testing facilities exclusive of instruments and sensing devices necessary for proper determination of the emission of air contaminants. If an authorized representative of the department, during the course of an inspection, obtains a sample of air contaminant, fuel, process material, or other material, the representative shall issue a receipt for the sample obtained to the owner or operator of, or person responsible for, the source tested.
3. To ascertain the state of compliance with this chapter and any applicable rules, a duly authorized officer, employee, or agent of the department may enter and inspect, at any reasonable time, any property, premises, or place on or at which a lead-based paint remediation activity is ongoing. If requested, the department shall provide to the owner or operator of the premises a report that sets forth all facts found which relate to compliance status.

23.1-06-12. Confidentiality of records.

1. Any record, report, or information obtained under this chapter must be available to the public. However, upon a showing satisfactory to the department that disclosure to the public of a part of the record, report, or information, other than emission data, to which the department has access

under this chapter, would divulge trade secrets, the department shall consider that part of the record, report, or information confidential.

2. This section may not prevent disclosure of any report, or record of information to federal, state, or local agencies when necessary for purposes of administration of any federal, state, or local air pollution control laws, or when relevant in any proceeding under this chapter.

23.1-06-13. Administrative procedure and judicial review.

Any proceeding under this chapter for the issuance or modification of rules and regulations, including emergency orders relating to control of air pollution, or determining compliance with rules and regulations of the department, must be conducted in accordance with chapter 28-32. Appeals from the proceeding may be taken under chapter 28-32. When an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order must be effective immediately, but on application to the department an interested person must be afforded a hearing before the environmental review advisory council within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing. Except as provided for in this section, notice of any hearing held under this chapter must be issued at least thirty days before the date specified for the hearing.

23.1-06-14. Enforcement - Penalties - Injunctions.

1. A person that willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, punishment must be a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.
2. A person that violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. A person that knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or that falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
4. A person that violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed ten thousand dollars per day per violation.

5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin a threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

23.1-06-15. Regulation of odors - Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the person making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
 - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;
 - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
 - c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the department of environmental quality, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the department of environmental quality. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the department of environmental quality has established a specific limitation by rule.
6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.
7.
 - a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under section 11-33-02, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
 - (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.

- (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
 - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers], and the setback for any other animal operation is one-half mile [.80 kilometer].
 - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers], and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
 - (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers], and the setback for any other animal operation is one mile [1.60 kilometers].
- b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.
- c. For purposes of this section:
- (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
 - (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
 - (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
 - (4) One cow-calf pair equals 1.0 animal unit;
 - (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
 - (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
 - (7) One horse equals 2.0 animal units;
 - (8) One sheep or lamb equals 0.1 animal unit;
 - (9) One turkey equals 0.0182 animal unit;
 - (10) One chicken, other than a laying hen, equals 0.008 animal unit;
 - (11) One laying hen equals 0.012 animal unit;
 - (12) One duck equals 0.033 animal unit; and
 - (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms], whether single or combined animal weight.

8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.
9. A county or township may not regulate or impose restrictions or requirements on animal feeding operations or other agricultural operations except as permitted under sections 11-33-02 and 58-03-11.

SECTION 22. Chapter 23.1-07 of the North Dakota Century Code is created and enacted as follows:

23.1-07-01. Statement of policy.

It is the policy of the state of North Dakota to protect the public health and welfare of the people of the state and the state's water resources by classifying all public water supply and wastewater disposal systems in the state and by requiring the examination of operators and the certification of their competency to supervise the operations of such facilities.

23.1-07-02. Definitions.

For the purpose of this chapter, unless the context otherwise requires:

1. "Certificate" means a certificate of competency issued by the department stating that the operator holding the certificate meets the requirements for the specified operator grade in the certification program.
2. "Department" means the department of environmental quality.
3. "Ground water under the direct influence of surface water" means water beneath the surface of the ground with significant occurrence of insects or other macro-organisms, algae, or large-diameter pathogens such as Giardia lamblia, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.
4. "Operator" means the person in direct responsible charge of the operation of a water treatment plant, a water distribution system, a wastewater treatment plant, or a wastewater collection system.
5. "Population equivalent" for a wastewater collection system or treatment plant means the calculated population that would normally contribute the same amount of biochemical oxygen demand per day computed on the basis of seventeen hundredths of one pound [77.11 grams] of five-day, sixty-eight-degree Fahrenheit [20-degree Celsius] biochemical oxygen demand per capita per day.
6. "Wastewater collection system" means that portion of the wastewater disposal system in which wastewater is conveyed to a wastewater treatment plant from the premises of a contributor.
7. "Wastewater disposal system" means the system of pipes, structures, and facilities through which wastewater from a public sewer system or industry is collected and treated for final disposal. The system must serve a population equivalent of twenty-five or more persons.

8. "Wastewater treatment plant" means that portion of the wastewater disposal system used for the treatment and disposal of wastewater and the solids removed from wastewater.
9. "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.
10. "Water supply system" means the system of pipes, structures, and facilities through which a public water supply is obtained, treated, and sold or distributed for human consumption or household use. The system must have at least fifteen service connections or regularly serve an average of twenty-five or more persons for at least sixty days a year.
11. "Water treatment plant" means that portion of the water supply system that in some way alters the physical, chemical, or bacteriological quality of the water.

23.1-07-03. Classification of plants and systems.

The department shall classify all water treatment plants, water distribution systems, wastewater treatment plants, and wastewater collection systems with due regard to the size, type, character of water and wastewater to be treated, and other physical conditions affecting such facilities, and according to the skill, knowledge, and experience that an operator in responsible charge must have to successfully supervise the operation of such facilities, so as to protect the public health and prevent pollution of the waters of the state.

23.1-07-04. Certification.

When the department is satisfied an applicant is qualified by examination or otherwise to supervise the operation of treatment plants and systems, the department shall issue a certificate attesting to the competency of the applicant as an operator. The certificate must indicate the classification of treatment plant or system the operator is qualified to supervise.

1. A certificate issued under this chapter is valid for only one year and expires on the first day of July of the year after which it was issued.
2. The department may revoke or suspend the certificate of an operator issued under this chapter if the operator has practiced fraud or deception in obtaining the certificate or in the performance of the operator's duty as an operator; if reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties; or if the operator is incompetent and unable to perform properly the operator's duties as an operator. A certificate may not be revoked or suspended except after a hearing before the director of the department, or the director's designated representative. If a certificate is suspended or revoked, a new application for certification may be considered by the department only after the conditions causing the suspension or revocation have been corrected, and evidence of this fact has been satisfactorily submitted to the department. A new certificate may then be granted by the department.
3. Certificates in appropriate classification issued to operators before the effective date of this chapter continue in effect.

23.1-07-05. Fees.

The department may charge a fee for certificates issued under this chapter, but the fees may not exceed fifty dollars for the initial certificate, or twenty-five dollars for the annual renewal certificate. All receipts from the fees must be deposited in the state treasury to be credited to a special fund to be known as the "operators' certification fund" to be used by the department to administer and enforce this chapter and financially assist the department in conducting operator training programs. Any surplus at the end of the fiscal year must be retained by the department for future expenditures.

23.1-07-06. Duties of the department.

The department shall:

1. Hold at least one examination each year at a designated time and place for the purpose of examining candidates for certification.
2. Promote the program of certification of water supply and wastewater disposal system operators.
3. Distribute notices and applications and to receive and evaluate applications.
4. Collect fees for initial certification and annual renewal.
5. Prepare, conduct, and grade examinations.
6. Maintain records of operator qualifications, certification examination results, and a register of certified operators.
7. Promote and schedule regular training schools and programs.
8. Adopt rules necessary to carry out this chapter.

23.1-07-07. Unlawful operation.

Except as provided in this section, it is unlawful for any person to operate a water treatment plant or water distribution system serving twenty-five or more individuals or a wastewater treatment plant or wastewater collection system serving a population equivalent of twenty-five or more individuals unless the competency of the operator to operate such a plant or system is certified by the department in a grade corresponding to the classification of that portion of the system to be supervised. Operators of wastewater collection systems and wastewater stabilization ponds or other nonmechanical wastewater treatment plants that serve a population equivalent of less than five hundred individuals are excluded from this chapter. Operators of water supply systems that serve other than year-round residents are excluded from this chapter if all of the following conditions are met:

1. The water supply is obtained solely from ground water sources not under the direct influence of surface water.
2. Treatment, if provided, consists strictly of disinfection, fluoridation, sequestration, corrosion control, or other processes that involve simple chemical addition and minor operational control.

3. The water supply system is not required by the federal Safe Drinking Water Act or its implementing regulations to be operated by qualified personnel.

23.1-07-08. Violations - Penalty.

Any person violating this chapter or the rules adopted under this chapter, after written notice of the violation by the department, is guilty of a class A misdemeanor.

SECTION 23. Chapter 23.1-08 of the North Dakota Century Code is created and enacted as follows:

23.1-08-01. Finding of necessity.

The legislative assembly finds that:

1. The people of North Dakota have a right to a clean environment, and the costs of maintaining a clean environment through the efficient environmentally acceptable management of solid wastes should be borne by those who use such services.
2. Serious economic, management, and technical problems exist in the management of solid wastes resulting from residential, commercial, industrial, agricultural, and other activities carried on in said jurisdictions.
3. Inefficient and improper methods of managing solid wastes create serious hazards to the public health, result in scenic blights, cause pollution of air and water resources, cause accident hazards, increase rodent and insect disease vectors, have an adverse effect on land values, create public nuisances, and otherwise interfere with community life and development.
4. While the management of solid wastes is the responsibility of each person, problems of solid waste management have become a matter statewide in scope and concern, and necessitate state action through technical assistance and leadership in the application of new improved methods and processes to reduce the amount of solid wastes and unsalvageable materials and to promote environmentally acceptable and economical solid waste management.

23.1-08-02. Definitions.

1. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
2. "Department" means the department of environmental quality.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
5. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible

- human or animal to the solid waste could cause the human or animal to contract an infectious disease.
6. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
 7. "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
 8. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or similar appliance.
 9. "Municipal waste" means solid waste that includes garbage; refuse; and trash generated by households, motels, hotels, recreation facilities, public and private facilities; and commercial, wholesale, private, and retail businesses. The term does not include special waste or industrial waste.
 10. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
 11. "Political subdivision" means a city, county, township, or solid waste management authority.
 12. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
 13. "Solid waste" means any garbage; refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
 - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
 - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
 14. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
 15. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production;

waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

16. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
17. "Transport" means the offsite movement of solid waste.

23.1-08-03. Powers and duties of the department.

The department shall:

1. Administer and enforce the state solid waste management program under this chapter.
2. Provide technical assistance on request to political subdivisions of the state and cooperate with appropriate federal agencies in carrying out the duties under this chapter. On request, the department may provide technical assistance to other persons.
3. Encourage and recommend procedures for using self-financing solid waste management systems and intermunicipal agencies.
4. Promote the planning and application of resource recovery facilities and systems that preserve and enhance the quality of air, water, and all resources.
5. Serve as the official state representative for all purposes of the Federal Solid Waste Disposal Act [Pub. L. 89-272; 79 Stat. 997; 42 U.S.C. 6901 et seq.], as amended, and for other state or federal legislation to assist in the management of solid wastes.
6. Survey the solid waste management needs within the state and maintain and upgrade the North Dakota solid waste management plan.
7. Require any person within the state to submit for review and approval a solid waste management plan to show that solid wastes will be disposed of in accordance with the provisions of this chapter.
8. Adopt and enforce rules governing solid waste management to conserve the air, water, and land resources of the state; protect the public health; prevent environmental pollution and public nuisances; and enable the department to administer this chapter, the adopted solid waste management plan, and delegated federal programs.
9. Establish procedures for permits governing the design, construction, operation, and closure of solid waste management facilities and systems.
10. Prepare, issue, modify, revoke, and enforce orders, after investigation, inspection, notice, and hearing, prohibiting violation of this chapter or of any rules issued under this chapter, and requiring remedial measures for solid waste management as may be necessary or appropriate under this chapter.
11. Adopt rules to establish categories and classifications of solid waste and solid waste management facilities based on waste type and quantity, facility

operation, or other facility characteristics and to limit, restrict, or prohibit the disposal of solid wastes based on environmental or public health rationale.

12. Adopt rules to establish standards and requirements for each category of solid waste management facility.
13. Adopt rules to establish financial assurance requirements to be met by any person proposing construction or operation of a solid waste management facility sufficient to provide for closure and postclosure activities. Financial assurance requirements may include: insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, and financial tests or corporate guarantees.
14. Conduct an environmental compliance background review of any applicant for any permit. In conducting the review, if the department finds an applicant for a permit has intentionally misrepresented or concealed any material fact from the department, or has obtained a permit by intentional misrepresentation or concealment of a material fact, has been convicted of a felony or pleaded guilty or nolo contendere to a felony within three years preceding the application for the permit, or has been adjudicated in contempt of an order of any court within three years preceding the application for the permit, the department may deny the application. The department shall consider the relevance of the offense to the business to which the permit is issued, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, and the ownership and management structure in place at the time of the offense.

23.1-08-04. Coal combustion residues - Present use and disposal deemed acceptable.

Notwithstanding any other provision of law, the legislative assembly deems the present use and disposal of coal combustion residues to be acceptable and that present regulation allows for the beneficial use of coal combustion residues in concrete, for other construction applications, and for other innovative uses and allows for safe disposal without coal combustion residues being regulated as a hazardous waste. If a federal law or regulation is adopted pertaining to the use and disposal of coal combustion residues, this section does not prohibit the state from seeking state primacy of the federal program.

23.1-08-05. Commercial oilfield special waste recycling facilities - Action against well operators restricted.

1. By June 1, 2015, the department shall select at least one commercial oilfield special waste recycling facility having a pending beneficial use application, for authorization of operation of the facility as a pilot project and to assist the department to develop standards for recycling of oilfield special waste. The pending beneficial use application of the pilot project facility must be supported by scientific findings from a third-party source focused on the anticipated environmental performance of the end products of the recycled oilfield special waste and the practical utility of those end products.
2. Any pilot project facility and any commercial oilfield special waste recycling facility permitted after June 30, 2017, shall obtain a solid waste permit from the department and a treating plant permit from the industrial commission for treatment of oilfield special waste.

3. Any selected pilot project facility may operate as an oilfield special waste recycling facility through June 30, 2017, and may implement beneficial use demonstration projects using processed materials under the guidance of the department. A selected pilot project facility operator shall cooperate with the department to monitor and analyze impacts to the environment.
4. By July 1, 2017, based upon the results of any pilot projects, the department shall make recommendations either to adopt rules under chapter 28-32 governing operations and permitting of commercial oilfield special waste recycling facilities, or to develop written guidelines on recycling and beneficial use of oilfield special waste under the department's beneficial use approval process. The rules or guidelines must assure compliance with federal and state laws and rules for protection of the state's water and air and public health in the handling and subsequent use of oilfield special waste.
5. Upon presentation of official credentials, an employee authorized by the department may:
 - a. Examine the premises and facilities and copy books, papers, records, memoranda, or data of a commercial oilfield special waste recycling facility.
 - b. Enter upon public or private property to take action authorized by this chapter and rules adopted under this chapter, including obtaining information from any person, conducting surveys and investigations, and taking corrective action.
6. The operator of the commercial oilfield special waste recycling facility is liable for the cost of any inspection and corrective action required by the department.
7. As a condition of permitting, the department may require the operator of a commercial oilfield special waste recycling facility to post a bond or other financial assurance payable to the state in a sufficient amount for remediation of any release or disposal of oilfield special waste in violation of the rules of the department, on the premises or property of the facility or at a place where treated or untreated materials from the facility are taken for use or disposal.
8. As used in this section:
 - a. "Commercial oilfield special waste recycling facility" means a commercial recycling facility permitted, or a commercial recycling facility pilot project authorized, under this section for extraction of reusable solids and fluids from any or all types of oilfield special waste.
 - b. "Drilling operation" means oil and gas drilling and production operations and any associated activities that generate oilfield special waste.
 - c. "Oilfield special waste" means special waste associated with oil and gas drilling operations, exploration, development, or production and specifically includes drill cuttings, saltwater, and other solids and fluids from drilling operations.
9. Upon delivery of oilfield special waste to a commercial oilfield special waste recycling facility that is permitted or authorized to conduct recycling operations

under this section and is not affiliated with the well operator, acceptance of the oilfield special waste by the recycling facility, and after the oilfield special waste has been treated and converted to a beneficial use as a usable product or legitimate substitute for a usable product, the well operator is not liable in any civil or criminal action for any subsequent claim or charge regarding the material converted to a beneficial use.

23.1-08-06. Local government ordinances.

Any political subdivision of the state may enact and enforce a solid waste management ordinance that is equal to or more stringent than this chapter and the rules adopted under this chapter.

23.1-08-07. Littering and open burning prohibited - Penalty.

1. A person may not discard and abandon 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. 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 two 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 and the person is subject to the civil penalty provided in section 23.1-08-23.

23.1-08-08. Prohibition in landfill disposal - Lead-acid batteries accepted as trade-ins.

1. Infectious waste must be properly treated before disposal by methods approved by the department. A person may not knowingly deposit in a landfill untreated infectious waste.
2. Except as provided in subsection 3, a person may not place in municipal waste or discard or dispose of in a landfill lead-acid batteries, used motor oil, or major appliances.
3. If resource recovery markets are not available for the items listed in subsection 2, the items must be disposed of in a manner approved by the department.
4. Lead-acid batteries must be accepted as trade-ins for new lead-acid batteries by any person who sells lead-acid batteries at retail.

23.1-08-09. Permits.

1. The department may issue permits for solid waste management facilities and solid waste transporters. A person may not own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. Upon receipt of a permit application, the department shall give public notice, in the official newspaper of the county in which the facility is to be located, that the department is considering an application for a solid waste management

facility. The notice must state the name of the applicant, the location of the facility, and a description of the facility. The department shall require as a condition of a permit for a solid waste management facility, not owned or operated by the state or a political subdivision, that any entity that controls the permitholder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permitholder. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares of a permitholder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permitholder, or to direct the management or policies of a permitholder, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. All permits are nontransferable, are for a term of not more than ten years from the date of issuance, and are conditioned upon the observance of the laws of the state and the rules adopted under this chapter.

2. For each permit application, the department shall notify the board of county commissioners of a county in which a new solid waste management facility will be located of the department's intention to issue a permit for the facility. The board of county commissioners may call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority of the qualified electors voting on the question in the election vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county.
3. Notwithstanding subsection 2, if the new solid waste management facility will be owned or operated by a solid waste management authority, a special election to approve or disapprove of a facility may be called only if the boards of county commissioners from a majority of the counties in the solid waste management district call for a special election. However, a special election must be conducted in each county within the authority. If a majority of the qualified electors voting on the question in the election vote to disapprove of the facility, the department may not issue the permit.
4. Subsections 2 and 3 do not apply to a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation.

23.1-08-10. Fees - Deposit in operating fund.

The department by rule may prescribe the payment and collection of reasonable fees to issue permits or registration certificates for registering, licensing, or permitting solid waste generators, transporters, and treatment, storage, recycling, or disposal facilities. The fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit licensing or registration fees must be deposited in the department operating fund in the state treasury, and any expenditures from the fund are subject to

appropriation by the legislative assembly. Applicants for special use solid waste management facilities shall submit a minimum fee as follows:

1. Twenty thousand dollars for any facility that receives on average one hundred tons [90718 kilograms] or more per day.
2. Ten thousand dollars for any facility which receives on average more than ten tons [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

23.1-08-11. Solid waste management fund - Administration.

The solid waste management fund is a special fund in the state treasury. The Bank of North Dakota shall administer the fund. The fund is a revolving fund, subject to appropriation by the legislative assembly. The Bank may annually deduct up to one-half of one percent of the fund balance including the principal balance of the outstanding loans as a service fee for administering the fund. The Bank shall contract with a certified public accounting firm to audit the fund once every two years. The cost of the audit and any other actual costs incurred by the Bank on behalf of the fund must be paid from the fund. Section 54-44.1-11 does not apply to the fund.

23.1-08-12. Applications for grants or loans - Loan terms.

Moneys in the solid waste management fund may be used to make grants or low-interest loans to political subdivisions for waste reduction, planning, resource recovery, and recycling projects with an emphasis on marketing. An application for a grant or loan out of moneys in the solid waste management fund must be made to the department. The department shall review an application to determine if the purpose of the grant or loan is consistent with the purposes of the fund and the district solid waste management plan. The department shall adopt rules to implement this section. If the department approves an application, the department shall forward the application and the results of the department's review of the application to the Bank of North Dakota. The Bank, in consultation with the department, shall determine the financial criteria that must be met for an application to be approved. A loan must be repaid within a period not exceeding twenty years at an interest rate of four percent.

23.1-08-13. Preconstruction site review.

The department, in cooperation with the state engineer and the state geologist, shall develop criteria for siting a solid waste disposal facility based upon potential impact on environmental resources. Any application for a landfill permit received after the department develops siting criteria as required by this section must be reviewed for site suitability by the department after consultation with the state engineer and state geologist before any site development. Site development does not include the assessment or monitoring associated with the review as required by the department in consultation with the state engineer and state geologist.

23.1-08-14. Waste characterization.

The department may not allow the storage or disposal of solid waste from outside this state, unless it is demonstrated that the governing authority or the generator of the solid waste from outside this state has an effective program for waste quality control and for waste characterization.

23.1-08-15. Municipal waste landfills and incinerators - Certification.

A municipal waste landfill and a municipal waste incinerator must have at least one individual certified by the department onsite at all times during the operation of the landfill or incinerator. The department shall adopt training standards and certification requirements.

23.1-08-16. Public educational materials - Municipal waste reduction and recycling.

The department, after consulting with the superintendent of public instruction, shall develop and disseminate educational materials to encourage voluntary municipal waste reduction, source separation, reuse of materials, recycling efforts, and appropriate management of municipal waste.

23.1-08-17. Disclosure of information before issuance, renewal, transfer, or major modification of permit.

Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of solid waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation which has been entered against the applicant within five years before the date of submission of the application.

23.1-08-18. Inspections.

The department may inspect all solid waste management activities and facilities, at all reasonable times, to ensure compliance with the laws of this state, the provisions of this chapter, and the rules authorized under this chapter.

23.1-08-19. Administrative procedure and judicial review.

A proceeding under this chapter to adopt or modify rules, including emergency orders relating to solid waste management and land protection, or determine compliance with rules of the department, must be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as provided under that chapter. When an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department must be afforded a hearing before the environmental review advisory council within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

23.1-08-20. Injunction proceedings.

The violation of any provision of this chapter, or any rule or order issued under the chapter is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the judgment of the department a person has engaged in or is about to engage in any acts that constitute or will constitute a violation of this chapter, or any rule or order issued under the chapter, the department, in accordance with the laws governing injunctions and other process, may maintain an action in the name of the state enjoining the action or for an order directing compliance, and upon a showing by the department that the person has engaged or is about to engage in the acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

23.1-08-21. Plats.

A person operating a solid waste management facility for disposal under a permit issued under this chapter shall, upon completion of the operation at each site, file a plat of the area with the recorder of each county in which the facility is located, together with a description of the wastes placed therein.

23.1-08-22. Exemption.

The provisions of this chapter, and the rules or orders authorized under the chapter, do not prevent an individual who resides on unplatted land in unincorporated areas of this state from disposing of that individual's normal household wastes on that individual's property, so long as doing so does not create a health hazard or nuisance.

23.1-08-23. Penalties.

1. Any person that violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
2. Any person that willfully violates any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
3. Any person that willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or

required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or that falsifies, tampers with, or willfully renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

SECTION 24. Chapter 23.1-09 of the North Dakota Century Code is created and enacted as follows:

23.1-09-01. Definitions.

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

1. "Actually incurred" means in the case of corrective action expenditures, the owner, the operator, an insurer of the owner or operator, or a contractor hired by the owner, operator, or insurer has made a payment, or a contractor has expended time and materials.
2. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term includes the repair of the closure of a municipal waste landfill on which the action occurs.
3. "Department" means the department of environmental quality.
4. "Fund" means the municipal waste landfill release compensation fund.
5. "Operator" means any person in control of, or having responsibility for, the daily operation of a municipal waste landfill under this chapter.
6. "Owner" means any person who holds title to, controls, or possesses an interest in the municipal waste landfill before or after the discontinuation of its use.
7. "Release" means any unintentional leaking, emitting, discharging, or escaping of leachate from a municipal waste landfill into the environment occurring after July 1, 1993, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

23.1-09-02. Municipal waste landfill release fund created - Administration of fund.

A municipal waste landfill release compensation fund is created and the department shall administer the fund according to this chapter. The department may employ any assistance and staff to administer the fund within the limits of legislative appropriation.

23.1-09-03. Adoption of rules.

The department shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

23.1-09-04. Release discovery.

An owner or operator shall notify the department if the owner or operator has reason to believe that a release has occurred. The department may require corrective action as provided by subsection 10 of section 23.1-08-03.

23.1-09-05. Owner or operator not identified.

The department may initiate legal action to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with section 23.1-09-04, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

23.1-09-06. Imminent hazard.

Upon receipt of information that a release has occurred which may present an imminent or substantial endangerment of public health or environmental resources, the department may take such emergency action as it determines necessary to protect the public health or the environmental resources.

23.1-09-07. Duty to take action.

Nothing in this chapter limits any person's duty to take action related to a release. However, payment for corrective actions required as a result of a release is governed by this chapter. Nothing in this chapter limits remediation activities taken or directed by any state or federal agency under other environmental statutes.

23.1-09-08. Providing of information.

A person that the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning wastes placed into a municipal waste landfill, or a person that may have information concerning a release, if requested by the department, must furnish to the department any information that person has or may reasonably obtain which is relevant to the release.

23.1-09-09. Examination of records.

An employee of the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data that may be related to a release which belong to a person that has a duty to provide information to the department under section 23.1-09-08; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person that has a duty to provide the information under section 23.1-09-08, conducting surveys and investigations, and taking corrective action.

23.1-09-10. Responsibility for cost.

The owner or operator is liable for the cost of corrective action required by the department, including the cost of investigating the releases, and for legal actions of the department regarding the release. This chapter does not create any new cause of action for damages on behalf of third parties against the fund.

23.1-09-11. Liability avoided.

An owner or operator may not avoid liability under this chapter or other state environmental law by means of a conveyance of any right, title, or interest in real property or by an indemnification, hold harmless agreement, or similar agreement. However, the provisions of this chapter do not:

1. Prohibit a person that may be liable from entering an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a cause of action by a person that may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

23.1-09-12. Other remedies.

Nothing in this chapter limits the powers of the department, or precludes the pursuit of any administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

23.1-09-13. Revenue to the fund.

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

1. Any premium fee collected under section 23.1-09-15;
2. Any money recovered by the fund under section 23.1-09-20, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

23.1-09-14. Eligibility.

1. An owner or operator of an active disposal unit at a municipal waste landfill site, or of a new disposal unit allowed by permit under chapter 23.1-08, shall participate in the fund for that unit provided:
 - a. The disposal unit is designed, constructed, operated, and closed to comply with federal and state statutes and adopted rules in effect as of October 9, 1993;
 - b. The owner or operator has notified the board of the local solid waste management district, and the board has acknowledged and approved the municipal waste landfill site to comply with chapter 23.1-08; and

- c. The owner or operator pays the annual premium fee under section 23.1-09-15 during the duration of operation of the landfill site, except as provided by section 23.1-09-22.
2. An owner or operator that does not comply with this section or with section 23.1-09-15 is ineligible for reimbursement of claims for corrective action.

23.1-09-15. Premium fee.

1. An owner or operator of a municipal waste landfill site that is eligible and participates in the fund shall:
 - a. Notify the department, on forms to be made available by the department, of its intent to participate in the fund at the time of application for permit under chapter 23.1-08 for new disposal units;
 - b. Demonstrate that the disposal unit and the landfill site comply with applicable laws and rules; and
 - c. Pay an annual premium fee of one dollar per ton [907.18 kilograms] or thirty-three cents per cubic yard [0.76 cubic meter] for all solid waste disposed at the landfill site during the premium fee period.
2. The premium fee is payable annually by January thirtieth for a premium fee period corresponding to the previous calendar year.
3. The premium fees collected under this section must be paid to the department for deposit in the state treasury for credit to the fund.

23.1-09-16. Reimbursement for corrective action.

The department shall reimburse an eligible owner or operator for the costs of corrective action, including the investigation, which are greater than one hundred thousand dollars. A reimbursement may not be made unless the department determines that:

1. At the time the release was discovered the owner or operator and the landfill site were in compliance with applicable federal and state statutes and adopted rules, including rules relating to financial responsibility;
2. The department was given notice of the release as required by this chapter and other applicable federal and state statutes;
3. The release occurred from the active disposal unit or a new disposal unit under section 23.1-09-14;
4. The owner or operator has paid the first one hundred thousand dollars of cost of corrective action; and
5. The owner or operator, to the extent possible, fully cooperated with the department in responding to the release.

23.1-09-17. Application for reimbursement.

An eligible owner or operator that has undertaken corrective action in response to a release, the time of release being unknown, may apply to the department for partial

or full reimbursement under section 23.1-09-16 and applicable rules. An owner or operator may be reimbursed only for releases discovered and reported after April 1, 1994.

23.1-09-18. Department to determine costs.

A reimbursement may not be made from the fund until the department has determined the costs for which reimbursement is requested were actually incurred and were reasonable. A reimbursement may be made to only one person for a release.

23.1-09-19. Liability of responsible person.

The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs as a result of a release.

23.1-09-20. Recovery of expenses.

Any reasonable and necessary expenses incurred by the fund as provided by sections 23.1-09-05, 23.1-09-06, 23.1-09-09, and 23.1-09-10 in taking corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the department against the owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

23.1-09-21. Coordination of benefits.

If an eligible owner or operator has financial assurance that provides coverage for corrective action, the department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of all financial assurance on the same basis.

23.1-09-22. Fund ceiling.

When the fund balance exceeds fifteen million dollars, the department shall suspend collection of the premium fee. When the fund balance becomes less than five million dollars through appropriations authorized by this chapter, the department shall resume collection of the fee.

23.1-09-23. Fund appropriation.

Money in the fund is appropriated to the department as a standing and continuing appropriation for the purposes of this chapter.

SECTION 25. Chapter 23.1-10 of the North Dakota Century Code is created and enacted as follows:

23.1-10-01. Environmental emergency cost recovery.

Except as provided in section 23.1-04-17, the department of environmental quality may recover from the parties responsible for an environmental emergency the reasonable and necessary state costs incurred in assessment, removal, corrective action, or monitoring as a result of an environmental emergency in violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, or 61-28.1. As used in this chapter, "environmental emergency" means a release into the environment of a substance requiring an immediate response to protect public health or welfare or the

environment from an imminent and substantial endangerment and which is in violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, or 61-28.1, and "reasonable and necessary costs" means those costs incurred by the department as a result of the failure of the parties responsible for the environmental emergency to implement appropriate assessment and corrective action after receipt of written notice from the department. If assessment, removal, monitoring, or corrective action must be initiated before identification of the responsible parties, the department may assess those prior costs to the responsible parties at the time they are identified.

23.1-10-02. Environmental quality restoration fund.

There is established an environmental quality restoration fund into which the funds recovered in this chapter may be deposited. The fund is to be administered by the department of environmental quality and may be used by the department for costs of environmental assessment, removal, corrective action, or monitoring as determined on a case-by-case basis.

23.1-10-03. Rules adoption.

The department of environmental quality may adopt rules to implement this chapter.

SECTION 26. Chapter 23.1-11 of the North Dakota Century Code is created and enacted as follows:

23.1-11-01. Degradation prevention program - Maintenance of waters.

This chapter establishes a degradation prevention program to protect ground water resources, encourage the wise use of agricultural chemicals, provide for public education regarding preservation of ground water resources, and provide for safe disposal of wastes in a manner that will not endanger the state's ground water resource. Waters of the state must be maintained within standards established under this chapter unless it can be affirmatively demonstrated that a change in quality is justifiable to provide necessary economic or social development and will not adversely affect the beneficial uses of water.

23.1-11-02. Administration of chapter.

The department of environmental quality shall administer this chapter. For purposes of this chapter, "commissioner" means the agriculture commissioner and "department" means the department of environmental quality. Notwithstanding section 4.1-33-03, the agriculture commissioner shall administer chapter 4.1-33 as it relates to pesticide usage.

23.1-11-03. Education program.

The department, the commissioner, the North Dakota state university extension service, and the North Dakota agricultural experiment station shall cooperate with other state and federal agencies on the development of a ground water protection education program.

23.1-11-04. Chemical use data and confidentiality requirement.

The department may require chemical use data from product registrants on products that have been or may likely be found in ground water to conduct its ground water protection program. This information must include chemical registration data and sales information. The department shall keep this information confidential.

23.1-11-05. Ground water standards.

The department shall establish standards for compounds in ground water as set forth by other states and the United States environmental protection agency unless new scientifically confirmed data provides justification for changing these standards.

23.1-11-06. Ground water quality monitoring.

The department shall conduct ground water quality monitoring activities in cooperation with the state engineer and other state agencies. Based on monitoring results, the department shall implement or require appropriate mitigation activities or remedial action to prevent future contamination of ground water. The commissioner may implement or require appropriate mitigation activities pursuant to chapter 4.1-33 to prevent future contamination of ground water as it relates to the use of pesticides.

23.1-11-07. Notification requirement.

A person with verifiable information on the presence of contamination of ground water within the state shall notify the department regarding the contamination.

23.1-11-08. Access for ground water monitoring.

The department may request landowners or operators allow access for monitoring of ground water and of soils at a depth where pesticides may threaten ground water. If the department is denied access by the landowner or operator, the department may apply to any court of competent jurisdiction for authorization to obtain access. The court, upon the application and compliance with chapter 29-29.1, may issue the authorization for the purposes requested. After consultation with the landowner or operator, the department shall conduct the monitoring in a manner that causes the least possible economic impact or hindrance to the landowner's or operator's operations. The names and addresses of landowners and operators who participate in a ground water monitoring program may not be linked, in any public disclosure, to the findings of the program unless it is determined by rule that a compelling public interest justifies the disclosure. Without that determination, disclosure of the information is a violation of section 12.1-13-01.

23.1-11-09. Pollution prevention criteria.

The commissioner, in cooperation with the department, North Dakota state university extension service, and the North Dakota agricultural experiment station, may develop pollution prevention criteria for areas utilized for mixing and storing agricultural chemicals at the retail and end use levels.

23.1-11-10. Wellhead protection program.

The department, in cooperation with the state engineer and state geologist, shall assist in implementing a public water supply wellhead protection program for protection of ground water resources utilizing existing state and local statutory authority.

23.1-11-11. Rules.

The department, with the approval of the commissioner and the state engineer, shall adopt rules necessary for implementation of this chapter.

23.1-11-12. Producer liability.

Liability may not be imposed upon an agricultural producer for costs of active cleanup, or for any damage associated with or resulting from the detection in ground water, of a pesticide if the applicator has complied with label instructions and other precautions for application of the pesticide and the applicator has a valid appropriate applicator's certification. Compliance with these requirements may be raised as an affirmative defense by an agricultural producer.

SECTION 27. Chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

23.1-12-01. Petroleum tank release compensation fund - Established.

A petroleum tank release compensation fund is established.

23.1-12-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation board.
4. "Commissioner" means the insurance commissioner.
5. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.
6. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
7. "Department" means the department of environmental quality.
8. "Fund" means the petroleum release compensation fund.
9. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
10. "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
11. "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
12. "Petroleum" means any of the following:
 - a. Gasoline and petroleum products as defined in chapter 23.1-13.

- b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
13. "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.
14. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
15. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
- a. Tanks owned by the federal government.
 - b. Tanks used for the transportation of petroleum.
 - c. A pipeline facility, including gathering lines:
 - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
 - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
 - d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
 - e. A tank used for storing heating oil for consumptive use on the premises where stored.
 - f. A surface impoundment, pit, pond, or lagoon.
 - g. A flowthrough process tank.
 - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
 - i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
 - j. A tank used for the storage of propane.
 - k. A tank used to fuel rail locomotives or surface coal mining equipment.

- l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
 - m. A portable tank.
 - n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
16. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
17. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

23.1-12-03. Petroleum release compensation board.

The petroleum release compensation advisory board shall review claims against the fund. The board consists of five members appointed by the governor, three of whom are active in petroleum marketing; one of whom is active in the petroleum, crude oil, or refining industry; and one of whom is active in the insurance industry. A member active in petroleum marketing must be appointed from a list of three recommended by the North Dakota retail petroleum marketers association. A member active in the petroleum, crude oil, or refining industry must be appointed from a list of three recommended by the North Dakota petroleum council. A member active in the insurance industry must be appointed from a list of three recommended by the North Dakota professional insurance agents association. Members must be appointed to terms of three years with the terms arranged so the term of at least one member, but no more than two members, expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board is entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as allowed to other state officers.

23.1-12-04. Administration of fund - Staff.

The administrator shall administer the fund according to this chapter. The administrator shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the administrator regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the administrator which may be appealed to the board, and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the administrator. The claimant or the administrator may appeal the board's decision to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

23.1-12-05. Adoption of rules.

The administrator shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the administrator, and any other rules as may be appropriate to administer this chapter.

23.1-12-06. Release discovery.

If the department has reason to believe a release has occurred, it shall notify the administrator. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

23.1-12-07. Owner or operator not identified.

The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

23.1-12-08. Imminent hazard.

Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take emergency action necessary to protect health or the environment.

23.1-12-09. Duty to notify.

This chapter does not limit a person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

23.1-12-10. Providing of information.

A person the administrator or the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning a release shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain which is relevant to the release.

23.1-12-11. Examination of records.

Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the administrator or the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the

information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

23.1-12-12. Responsibility for cost.

The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases. This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

23.1-12-13. Liability avoided.

An owner or operator may not avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, this chapter does not:

1. Prohibit a person that may be liable from entering an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a claim for relief brought by a person that may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

23.1-12-14. Other remedies.

This chapter does not limit the powers of the administrator or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

23.1-12-15. Revenue to the fund.

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

1. Any registration fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

23.1-12-16. Penalty.

A tank owner violating section 23.1-12-17 is guilty of a class B misdemeanor unless another penalty is specifically provided.

23.1-12-17. Registration fee.

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the commissioner along with the application for registration with the fund. If the commissioner rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
5. The registration fees collected under this section must be paid to the fund administrator for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
6. 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.

23.1-12-18. Reimbursement for corrective action.

1. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:
 - a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
 - a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the commissioner or the commissioner's agent has participated. The settlement must be reviewed and approved by the commissioner.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.

5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23.1-12-19. Application for reimbursement.

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the administrator for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

23.1-12-20. Administrator to determine costs.

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

23.1-12-21. Liability of responsible person.

The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

23.1-12-22. Reimbursement not subject to attachment.

The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party that performed the corrective action.

23.1-12-23. Recovery of expenses.

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

23.1-12-24. Costs exceeding reimbursement.

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

23.1-12-25. Coordination of benefits.

If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

23.1-12-26. Third-party damages - Participation in actions and review of settlements.

1. An owner or operator sued for damages resulting from a release shall notify the administrator within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the administrator within fourteen days of the demand or the negotiations.
3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

23.1-12-27. Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the administrator.

3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the administrator.
4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the administrator. The administrator may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

23.1-12-28. Matching federal funds.

The administrator and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administrator and the board determine the allowance appropriate.

23.1-12-29. Fund appropriations.

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

23.1-12-30. Investment of fund.

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

purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

SECTION 28. Chapter 23.1-13 of the North Dakota Century Code is created and enacted as follows:

23.1-13-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Adulterated", when used to describe any petroleum or alternative fuel product, means a petroleum or alternative fuel product that 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. "Department" means the department of environmental quality.
4. "Diesel fuel" means 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.
5. "Gasoline" means a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.
6. "Heating oil" means 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.
7. "Kerosene" means a petroleum fraction which is free from water, additives, foreign or suspended matter, and is suitable for use as an illuminating oil.
8. "Lubricating oil" means 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.
9. "Misbranded", when used in connection with any petroleum or alternative fuel product, means a petroleum or alternative fuel product that is not labeled as required under the provisions of this chapter.
10. "Sell" and "sale" include the keeping, offering, or exposing for sale, transportation, or exchange of the restricted or prohibited article.
11. "Tractor fuel" means 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.

23.1-13-02. Department to enforce law - Regulation of petroleum products.

This chapter must be enforced by the department. The department may adopt rules under chapter 28-32 for the interpretation of this chapter.

23.1-13-03. Sale of adulterated and misbranded gasoline, kerosene, tractor fuel, heating oil, diesel fuel, or lubricating oil prohibited.

A person may not sell or offer or expose for sale any kerosene, gasoline, or other petroleum product intended to be used as kerosene, gasoline, any tractor fuel, heating oil, diesel fuel, or lubricating oil that is adulterated or misbranded.

23.1-13-04. Retail sale of alcohol-blended gasoline - Label requirements.

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. 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.

23.1-13-05. Retail sale of gasoline containing methyl tertiary butyl ether - Restriction.

A person may not sell, offer for sale, supply, or offer for supply gasoline that contains methyl tertiary butyl ether in quantities greater than five-tenths of one percent by volume. However, a person may ship gasoline containing methyl tertiary butyl ether within the state for disposition outside the state, including storage coincident to shipment.

23.1-13-06. Retail sale of alternative fuels - Notice required.

A dealer may not sell at retail alternative fuel unless the dispensing unit and price advertising contains the name and main components of the alternative fuel or alternative fuel blend. The disclosure must follow the same labeling specifications that apply for petroleum-based fuels. The department shall adopt rules under chapter 28-32 for labeling of petroleum products and alternative fuels. A producer of alternative fuels or alternative fuel blends may provide a retailer with a label promoting the benefits of the alternative fuel if the label meets the requirements of this section.

23.1-13-07. Labeling gasoline containers - Gasoline pipeline.

Every package, barrel, filling station pump, and every tank wagon, truck, or car containing gasoline for sale or consignment or held with intent to sell or consign the same within this state or to transport it into this state must be clearly and distinctly stamped, labeled, or tagged with the word "gasoline". Every oil station pipeline for gasoline must be painted red. The fittings upon such lines; however, may be painted other colors to designate grades. Pipelines for gasoline must be entirely separate from lines for kerosene or for any other high flash product. Every can, bucket, barrel, or other container of less than sixty gallons [227.12 liters] capacity used for storage or delivery of gasoline, benzine, or benzine products, unless the same is made of glass, must be painted bright red, and such containers may not be used for the storage or delivery of kerosene. In the case of glass containers, the contents must be designated by a red label securely pasted on or attached to the containers bearing the name of the product.

23.1-13-08. Labeling kerosene - Containers - Pipeline.

Every package, barrel, filling station pump, and every tank wagon, truck, or car containing kerosene for sale or consignment when held within this state or transported into this state must be clearly and distinctly stamped, labeled, or tagged with the word "kerosene". Every oil station pipeline for kerosene must be painted aluminum and must be entirely separate from lines for gasoline or other low flash products.

23.1-13-09. Labeling tractor fuel.

Every package, barrel, pump, and every truck, tank wagon, or car containing tractor fuel oil, other than gasoline or kerosene, for sale or consignment, when held within this state or when being transported into this state must be clearly and distinctly tagged, marked, and labeled with the legend "Tractor fuel oil, not for illuminating purposes nor wick burners". Every oil station pipeline for tractor fuel must be painted yellow and must be entirely separate from lines for kerosene or other high flash product.

23.1-13-10. Labeling heating oil.

Every package, barrel, pump, and every tank wagon, truck, or car containing heating oil for sale or consignment, when held within this state or when being transported into this state, must be clearly and distinctly tagged, marked, or labeled with the designation of grade established by the department. Every oil station pipeline for heating oil must be painted green.

23.1-13-11. Labeling diesel fuel.

Every package, barrel, pump, and every tank wagon, truck, or car containing diesel fuel for sale or consignment, when held within this state or transported into this state, must be clearly and distinctly tagged, marked, or labeled with the designation "diesel fuel" together with its cetane number and the grade established by the department. Every oil station pipeline for diesel fuel must be painted green.

23.1-13-12. Specifications for petroleum products - Tests used.

Specifications for gasoline, kerosene, tractor fuel, diesel oil, heating oil, lubricating oil, alternative fuels, and liquefied petroleum gases, including propane, propylene, normal butane or isobutane, and butylene, must be determined by the department and must be based upon nationally recognized standards. When so determined by the department and adopted and promulgated as regulations and orders of the department in accordance with chapter 28-32, such specifications must be the specifications for such petroleum products sold in this state and official tests of such petroleum products must be based upon test specifications so determined adopted and promulgated.

23.1-13-13. How volume of heating oil determined.

In case of a dispute, heating oil must be sold on the basis of the United States gallon containing two hundred thirty-one cubic inches [3785.41 milliliters] at sixty degrees Fahrenheit [15.56 degrees Celsius]. The volume of the delivered oil; however, may be calculated from its weight and gravity degrees API in accordance with the national standard petroleum oil tables prepared by the national bureau of standards.

23.1-13-14. Department may prohibit sale of certain gasolines or motor fuels.

The department may prohibit the sale of any "gasoline improver" or motor fuel dope, oil additive, and of any gasoline mixed or compounded with any other chemical, substance, or solution which may be detrimental to the public health, injurious to internal combustion engines, or concerning which unsubstantiated claims are made. However, it may not prohibit the sale of any material, substance, or solution that has been favorably reported on by the United States bureau of standards or by the surgeon general or bureau of public health of the United States.

23.1-13-15. Sale of prohibited gasolines - Penalty.

Any person violating any of the provisions of section 23.1-13-14 is guilty of a class B misdemeanor.

23.1-13-16. Inspection fees.

Every person licensed by the tax commissioner as a motor vehicle fuel or special fuels dealer shall pay to the tax commissioner an inspection fee of one-fortieth of one cent per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel sold or used during a calendar month except those gallons sold out of state or those gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee must accompany the monthly report required in the following section and is due no later than the twenty-fifth day of each calendar month for the preceding month. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the state treasurer shall place the money in the general fund of the state. The tax commissioner shall make available annually a report by licensed dealer listing the number of gallons [liters] of motor vehicle fuel and special fuels upon which the inspection fee has been paid. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels taxes not in conflict with the provisions of this chapter govern the administration of the inspection fee levied by this chapter.

23.1-13-17. Report to tax commissioner of petroleum products - Contents.

No later than the twenty-fifth day of each calendar month, every person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer shall send to the tax commissioner a correct report of all purchases and sales of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel during the preceding month. The report must include the same information as required in chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes. Failure to send the report and inspection fee required by the preceding section to the tax commissioner constitutes a violation of the provisions of this chapter.

23.1-13-18. Bond may be required of dealer in petroleum products.

The tax commissioner may require any person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer to furnish a surety bond payable to the state in the sum of five hundred dollars, or twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and the payment of all inspection fees provided for in this chapter. The tax commissioner shall determine the sufficiency of the bond. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days

after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

23.1-13-19. Department may designate ports of entry and hold cars for inspection - Penalty.

The department may designate ports of entry of all transportation companies carrying petroleum products into this state for sale or consignment and may hold or delay any car or other vehicle of transportation entering this state carrying such products for sale or consignment until samples thereof have been obtained for inspection and analysis and until any other required information regarding the products contained in the shipment has been secured. The department may not hold or delay any shipment or consignment of petroleum products at the port of entry if the transportation company carrying such products will permit proper inspection and sampling of shipments or consignments at convenient designated points without the state, and will permit the inspection of transportation records and provide adequate information regarding the records of cars or other vehicles carrying such products at division points or at other places within or without the state where such cars or other vehicles, in normal practice, are stopped and held for switching and rearrangement or where ample opportunity is provided for proper inspection and sampling. The failure on the part of a transportation company or any of its officers or employees to hold any car or other vehicle of transportation for inspection is a class B misdemeanor.

23.1-13-20. Penalties.

A person violating or failing to comply with any of the provisions of this chapter, or with any rule issued under this chapter, is, unless another penalty is specifically provided, guilty of a class B misdemeanor.

SECTION 29. Chapter 23.1-14 of the North Dakota Century Code is created and enacted as follows:

23.1-14-01. Administration.

The department of environmental quality shall administer this chapter.

23.1-14-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Antifreeze" means any substance or preparation sold, distributed, or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid, to lower its freezing point, or to raise its boiling point.
2. "Department" means the department of environmental quality.
3. "Distribute" means to hold with intent to sell to the consumer, offer for sale, to sell, barter, or otherwise supply.
4. "Label" means any display of written, printed, or graphic matter on, or attached to, a package or the outside individual container or wrapper of the package.
5. "Package" means a sealed retail package, drum, or other container in which antifreeze is distributed to the consumer or a container holding no more than

fifty-five gallons [208.20 liters] from which the antifreeze is directly installed in the cooling system by seller or reseller.

23.1-14-03. Registration - Penalty.

Before antifreeze may be distributed in this state, the manufacturer or person whose name appears on the label shall apply to the department on forms provided by the department for registration for each antifreeze the manufacturer or person whose name appears on the label desires to distribute. All registrations expire on June thirtieth of each year. The application for registration must be accompanied by an inspection fee of forty dollars for each product, and by a label or other printed matter describing the product. Upon approval by the department, a copy of the registration must be furnished to the applicant. The department shall remit inspection fees received by the department to the state treasurer for deposit in the state general fund. A penalty of fifty percent of the registration fee must be imposed if the certificate of registration is not applied for on or before July first of each year or within the same month such antifreeze is first manufactured or sold within this state.

23.1-14-04. Adulteration.

Antifreeze is adulterated:

1. If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system of an internal combustion engine, or if, when used in the cooling system of such an engine, it would make the operation of the engine dangerous to the user; or
2. If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold or offered for sale.

23.1-14-05. Misbranding.

Antifreeze is misbranded:

1. If it does not bear a label which specifically identifies the product, states the name and place of business of the registrant, states the net quantity of contents in terms of liquid measure separately and accurately in a uniform location under the principal display panel, and contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze;
2. If the product is to be diluted with another substance for use and its labeling does not contain a statement or chart showing appropriate amounts of each substance to be used to provide protection from freezing at various degrees of temperature;
3. If the labeling contains a corrosion protection claim and does not include a statement of the amount to be used to provide such protection;
4. If its labeling contains any claim that it has been approved or recommended by the department; or
5. If its labeling is false, deceptive, misleading, or is illegal under any law.

23.1-14-06. Rules and regulations.

The department may adopt reasonable rules and standards under chapter 28-32 as necessary to administer this chapter.

23.1-14-07. Inspection, sampling, and analysis.

The department may, at reasonable hours, enter, inspect, and examine all places and property where antifreeze is stored or distributed for the purpose of taking reasonable samples of antifreeze for analysis together with specimens of labeling. The department shall examine promptly all samples received in connection with the administration and enforcement of this chapter and report the results to the owner and the registrant of the antifreeze.

23.1-14-08. Prohibited acts.

It is unlawful to:

1. Distribute any antifreeze that has not been registered under this chapter or for which the label is different from that accepted for registration.
2. Distribute any antifreeze that is adulterated or misbranded.
3. Refuse to permit entry or inspection or refuse to permit the acquisition of a sample of any antifreeze under this chapter.
4. Dispose of any antifreeze under "withdrawal from distribution" order under this chapter, except as provided in this chapter.
5. Distribute any antifreeze unless it is in the registrant's or manufacturer's package, except a distributor may obtain written authorization from the department annually to distribute antifreeze in bulk using a container supplied by the customer, provided the distributor attaches to the container a label bearing all of the information required by this chapter.
6. Use the term "ethylene glycol" on the label of a product which contains other glycols unless it is qualified by the word "base", "type", or wording of similar import and unless the product contains a minimum ethylene glycol content of seventy-five percent by regulation weight and a minimum total glycol content of ninety-three percent by weight. The product also must have a corrected specific gravity to give reliable freezing point readings on a commercial ethylene glycol type hydrometer and a freezing point, when mixed with an equal volume of water, of thirty-two degrees Fahrenheit [35.56 degrees Celsius] below zero or lower.

23.1-14-09. Enforcement.

When the department finds any antifreeze being distributed in violation of this chapter or any rules adopted under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the department or a court of competent jurisdiction. Copies of the order must also be sent by registered or certified mail to the registrant or to the person whose name and address appear on the label of the antifreeze. The department shall release for distribution the lot of antifreeze so withdrawn upon compliance with applicable rules, or for return to the registrant or the person whose name and address appears on the label for reprocessing or relabeling as may be required. If compliance is not obtained

within thirty days, the department may begin proceedings for condemnation. Any lot of antifreeze not in compliance with the law is subject to seizure upon complaint of the department in the district court of the county in which it is located or in the district court of Burleigh County.

23.1-14-10. Submission of formula.

The department may require an applicant for registration to furnish a statement of the formula of the applicant's antifreeze, unless the applicant can furnish other satisfactory evidence that the antifreeze is not adulterated or misbranded. The statement need not include inhibitor or other ingredients that total less than five percent by weight of the antifreeze. All statements of formula and other trade secrets furnished under this section are privileged and confidential and may not be made public or open to the inspection of any persons other than the department. No statement is subject to subpoena. Nor may a statement be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal without the consent of the applicant furnishing the statement to the department.

23.1-14-11. Penalty.

Any person that violates or fails to comply with this chapter, for which another penalty has not been specifically provided, is guilty of a class B misdemeanor.

23.1-14-12. Prosecutions - State's attorney.

Each state's attorney to whom the department reports any violation of this chapter shall institute appropriate proceedings in court without delay. However, nothing in this chapter may be construed as requiring the department to report minor violations for the institution of proceedings under this chapter whenever it believes the public interest will be served adequately by suitable written notice or warning.

23.1-14-13. Injunction proceedings.

In addition to other remedies, the department may apply to the district court of Burleigh County for a temporary or permanent injunction restraining any person from violating a provision of this chapter regardless of whether there exists an adequate remedy at law, and appropriate costs must be taxed by the court for all expenses to the department for the injunctive proceedings.

23.1-14-14. Reports by department.

Except as otherwise provided, the department may publish reports of any analyses, inspections, or research done under this chapter for the information of the public.

SECTION 30. Chapter 23.1-15 of the North Dakota Century Code is created and enacted as follows:

23.1-15-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts, or has remained for a period of more than forty-eight hours on private property without consent of the person in control of the property or in an inoperable condition such that it

has no substantial potential further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 23.1-15-09. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.

2. "Collector" means the owner of one or more special interest vehicles that collects, purchases, acquires, trades, or disposes of special interest vehicles or parts of special interest vehicles for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.
3. "Department" means the department of environmental quality.
4. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
5. "Special interest vehicle" means a motor vehicle that is at least twenty years old and has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
6. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
7. "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

23.1-15-02. Penalty for abandoning a motor vehicle.

Any person that abandons a motor vehicle on any public or private property, without the consent of the person in control of the property, is guilty of a class A misdemeanor.

23.1-15-03. Custody of abandoned vehicle.

Units of government may take into custody and impound an abandoned motor vehicle.

23.1-15-04. Conditions under which an abandoned vehicle may be sold immediately.

When an abandoned motor vehicle is more than seven model years of age, is lacking vital component parts, and does not display a license plate currently valid in North Dakota or any other state or foreign country, it is immediately eligible for disposition and must be disposed of to a scrap iron processor licensed under section 23.1-15-09, and is not subject to the notification, reclamation, or title provisions of this chapter. Any license plate displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.

23.1-15-05. Notice to owner of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 23.1-15-04, the unit of government taking it into custody shall give

notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle, and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 23.1-15-06, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale of the vehicle at a public auction pursuant to section 23.1-15-07.

2. The notice must be sent by mail to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.

23.1-15-06. Right of owner to reclaim abandoned vehicle.

1. The owner, secured parties, or any lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from the unit of government taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within fifteen days after the date of the notice required by section 23.1-15-05.
2. Nothing in this chapter may be construed to impair any lien of a garagekeeper under the laws of this state or the right of a lienholder or secured parties to foreclose. For the purposes of this section, "garagekeeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.

23.1-15-07. Public sale - Disposition of proceeds.

1. An abandoned motor vehicle not more than seven model years of age taken into custody and not reclaimed under section 23.1-15-06 must be sold to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department which is sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.
2. From the proceeds of the sale of an abandoned motor vehicle, the unit of government shall reimburse itself for the cost of towing, preserving, and storing the vehicle, and all notice and publication costs incurred pursuant to this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the permanent school fund.

23.1-15-08. Disposal of vehicles not sold.

When no bid has been received for an abandoned motor vehicle, the unit of government may dispose of it pursuant to contract under section 23.1-15-09.

23.1-15-09. Contracts for disposal - Issuance of licenses by department of environmental quality - Reimbursement of units of government for costs.

1. A unit of government may contract with any qualified licensed scrap iron processor for collection, storage, incineration, volume reduction, transportation, or other services necessary to prepare abandoned motor vehicles and other scrap metal for recycling or other methods of disposal. The contract may authorize the contracting scrap iron processor to pay to the owner of any abandoned motor vehicle an incentive payment for vehicle if it is voluntarily surrendered and delivered to the scrap iron processor. For purposes of this section, an owner of an abandoned motor vehicle includes only a person that has owned and operated the vehicle for the person's personal or business use.
2. The department may issue a license to any qualified scrap iron processor desiring to participate in a contract under this section that meets the requirements for solid waste disposers established by the department.
3. When a unit of government enters a contract with a scrap iron processor duly licensed by the department, the department may review the contract to determine whether it conforms to the department's plan for solid waste disposal. A contract that does conform may be approved by the department. When a contract has been approved, the department may reimburse the unit of government for the costs incurred under the contract, including incentive payments authorized and made under the contract, subject to the limitations of legislative appropriations.
4. The department may demand that a unit of government contract for the disposal of abandoned motor vehicles and other scrap metal under the department's plan for solid waste disposal. When the unit of government fails to contract within one hundred eighty days of the demand, the department, on behalf of the unit of government, may contract with any scrap iron processor duly licensed by the department for such disposal.

23.1-15-10. Abandoned motor vehicle disposal fund.

The abandoned motor vehicle disposal fund is established in the state treasury. All moneys derived from the investment of the fund are to be credited to the fund.

23.1-15-11. Tax on initial motor vehicle certificates of title.

A tax of one dollar and fifty cents is imposed on each initial North Dakota certificate of title issued to a passenger motor vehicle or a truck motor vehicle. The proceeds of the tax must be paid into the abandoned motor vehicle disposal fund. No registration plates or title certificate may be issued unless the tax is paid. Expenses of the fund arising under this chapter must be paid from the fund within the limits of legislative appropriation. If, on the first day of July in any year, the amount of uncommitted money in the abandoned motor vehicle disposal fund is two hundred fifty thousand dollars or more, the amount in excess of two hundred fifty thousand dollars must be transferred to the highway fund.

23.1-15-12. Storage of vehicles by collector - Limitations.

A collector may store unlicensed, operable or inoperable, vehicles and parts cars on the collector's property provided the vehicles and parts cars and the outdoor storage area are maintained so they do not constitute a health hazard and are screened from ordinary public view by means of a fence, trees, shrubbery, or other appropriate means.

⁸⁸ **SECTION 31. AMENDMENT.** Section 24-03-23 of the North Dakota Century Code is amended and reenacted as follows:

24-03-23. Encroachments on state highways.

No part of the right of way for state highways may be encroached upon by erection thereon of any structure, or placing thereon any personal property, other than a temporary parking of a motor vehicle, without a written permit from the director. Any encroachment may be caused to be removed, obliterated, or corrected by order of the director and the total cost thereof must be paid by the person responsible for the encroachment. Property other than motor vehicles left upon highway right of way for a period exceeding seventy-two hours, the ownership of which cannot be determined after reasonable effort has been made to do so, must be deemed abandoned and may be removed from the right of way and stored at the nearest site available for thirty days and if it is not claimed by the owner during such period, and the cost of removal and storage paid, it may be disposed of in the manner prescribed by the director. Abandoned motor vehicles are subject to the provisions of ~~sections 39-26-04 through 39-26-11~~chapter 23.1-15. If such property is disposed of it must, except as otherwise provided by this section, be sold or disposed of in the manner provided in ~~sections 39-26-05 through 39-26-09~~chapter 23.1-15. The receipts therefrom must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the permanent school fund.

SECTION 32. AMENDMENT. Subsection 5 of section 28-32-50 of the North Dakota Century Code is amended and reenacted as follows:

5. In any civil judicial proceeding involving adverse parties to an appeal or enforcement action involving an environmental permit issued under chapter ~~23-20-3, 23-25, 23-29~~23.1-04, 23.1-06, 23.1-08, or 61-28 in which two or more of the adverse parties are not an administrative agency or an agent of an administrative agency, the court may award the prevailing nonagency party reasonable attorney's fees and costs if the court finds in favor of that party and determines that the nonprevailing nonagency party acted without substantial justification, or on the basis of claims or allegations that are factually unsupported. The court shall award reasonable attorney's fees and costs if the court determines that the nonprevailing nonagency party's claims or allegations are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding covered by this subsection involves multiple claims or allegations, the court may apportion attorney's fees and costs in proportion to the time reasonably spent by a prevailing party relating to claims pursued by the nonprevailing party that were frivolous, factually unsupported, or without substantial justification.

⁸⁹ **SECTION 33. AMENDMENT.** Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

⁸⁸ Section 24-03-23 was also amended by section 1 of House Bill No. 1352, chapter 203.

38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Budget section report.

There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
 - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
 - b. Moneys received from the forfeiture of drilling and reclamation bonds.
 - c. Moneys received from any federal agency for the purpose of this section.
 - d. Moneys donated to the commission for the purposes of this section.
 - e. Moneys received from the state's oil and gas impact fund.
 - f. Moneys recovered under the provisions of section 38-08-04.8.
 - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
 - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
 - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
 - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:
 - a. Contracting for the plugging of abandoned wells.
 - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
 - c. To pay mineral owners their royalty share in confiscated oil.
 - d. Defraying costs incurred under section 38-08-04.4 in reclamation of oil and gas-related pipelines and associated facilities.
 - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to one million five hundred thousand dollars per biennium from the fund in the following priority:

⁸⁹ Section 38-08-04.5 was also amended by section 1 of House Bill No. 1347, chapter 251.

- (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
 - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
 - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.
 - (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
- f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the ~~state department of health~~department of environmental quality for the purposes provided under chapter ~~23-34~~23.1-10, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the ~~state department of health~~department of environmental quality shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
 4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

SECTION 34. AMENDMENT. Section 38-11.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-03.1. Inspection of well site.

Upon request of the surface owner or adjacent landowner, the ~~state department of health~~department of environmental quality shall inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, the ~~state department of health~~department of environmental quality shall issue appropriate orders under chapter ~~23-25~~23.1-06 to protect the health and safety of the surface owner's health, welfare, and property.

SECTION 35. AMENDMENT. Section 38-11.1-04.1 of the North Dakota Century Code is amended and reenacted 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~~department of environmental quality 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 36. AMENDMENT. Section 38-11.2-02 of the North Dakota Century Code is amended and reenacted as follows:

38-11.2-02. Inspection of well site.

Upon request of another state agency, the surface owner, or an adjacent landowner, the ~~state department of health~~department of environmental quality shall conduct a site visit and evaluate site-specific environmental data as necessary to ensure compliance with applicable environmental protection laws and regulations relating to air, water, and land management under the jurisdiction of the department.

SECTION 37. AMENDMENT. Subsection 12 of section 38-14.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12. To ~~promulgate regulations~~adopt rules consistent with state law, in consultation with the state geologist, ~~state department of health~~department of environmental quality, and the state engineer for the protection of the quality and quantity of waters affected by surface coal mining operations.

SECTION 38. AMENDMENT. Subsection 2 of section 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission's approval or modification of the permit or permit revision application must include consideration of the advice and technical assistance of the state historical society, the ~~state department of health~~department of environmental quality, the state soil conservation committee, the state game and fish department, the state forester, the state geologist, and the state engineer, and may also include those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface mined lands.

SECTION 39. AMENDMENT. Section 38-22-07 of the North Dakota Century Code is amended and reenacted as follows:

38-22-07. Permit consultation.

Before issuing a permit, the commission shall consult the ~~state department of health~~department of environmental quality.

SECTION 40. AMENDMENT. Section 38-22-12 of the North Dakota Century Code is amended and reenacted as follows:

38-22-12. Environmental protection - Reservoir integrity.

1. The commission shall take action to ensure that a storage facility does not cause pollution or create a nuisance. For the purposes of this provision and in applying other laws, carbon dioxide stored, and which remains in storage under a commission permit, is not a pollutant nor does it constitute a nuisance.
2. The commission's authority in subsection 1 does not limit the jurisdiction held by the ~~state department of health~~department of environmental quality. Nothing else in this chapter limits the jurisdiction held by the ~~state department of health~~department of environmental quality.
3. The commission shall take action to ensure that substances that compromise the objectives of this chapter or the integrity of a storage reservoir do not enter a storage reservoir.
4. The commission shall take action to ensure that carbon dioxide does not escape from a storage facility.

SECTION 41. AMENDMENT. Section 40-47-01 of the North Dakota Century Code is amended and reenacted as follows:

40-47-01. Cities may zone - Application of regulations.

For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards,

courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the ~~state department of health~~department of environmental quality as provided in section ~~23-20-3-03.123.1-04-04.~~

SECTION 42. AMENDMENT. Section 43-18-02 of the North Dakota Century Code is amended and reenacted as follows:

43-18-02. State board of plumbing - Members - Appointment - Qualifications.

The state board of plumbing shall consist of the chief sanitary engineer, or the ~~head of any division of the state department of health who may be named by the chief sanitary engineer to act in the chief sanitary engineer's stead~~director of the department of environmental quality, and four persons appointed by the governor. All of the appointed members must have been residents of this state for at least five years immediately preceding their appointment, and one of them must be a master plumber with at least five years of experience in North Dakota, one must be a journeyman plumber with at least five years of experience in North Dakota, one must be a registered professional engineer practicing mechanical engineering in North Dakota, and one must be a representative of the consuming public.

SECTION 43. AMENDMENT. Section 43-18-09 of the North Dakota Century Code is amended and reenacted as follows:

43-18-09. Board to adopt plumbing code - Provisions have force of law.

The board shall formulate, prepare, and circulate among all plumbers within this state a state plumbing code, which must contain the minimum basic standards for plumbing, drainage, and ventilation of plumbing in buildings of all classes. Such code must be approved by the ~~state department of health~~department of environmental quality. The provisions of said code have the force and effect of law and any violation thereof constitutes a violation of this chapter.

SECTION 44. AMENDMENT. Section 43-35-03 of the North Dakota Century Code is amended and reenacted as follows:

43-35-03. State board of water well contractors - Members' appointment - Qualification.

The state board of water well contractors consists of the state engineer and the ~~state health officer~~director of the department of environmental quality, or their duly authorized designees, two water well contractors appointed by the governor, one geothermal system driller appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

SECTION 45. AMENDMENT. Section 43-35-19 of the North Dakota Century Code is amended and reenacted as follows:

43-35-19. Standards for well drilling - Reports required.

All construction of water wells must comply with the rules adopted by the ~~state department of health~~department of environmental quality. Within thirty days after the

completion of each well, each water well contractor shall furnish to the board on forms provided by the board ~~such~~any information ~~as the state department of health shall require~~required by the department of environmental quality, including a log of formations penetrated, well depth, and casing size and weight. A copy of each report ~~also~~ also must ~~also~~ be furnished to the customer. All information submitted must remain the property of the board.

SECTION 46. AMENDMENT. Section 43-35-19.1 of the North Dakota Century Code is amended and reenacted as follows:

43-35-19.1. Standards for installation of water well pumps and pitless units.

All installation of water well pumps and pitless units must comply with the rules adopted by the ~~state department of health~~department of environmental quality and the board.

SECTION 47. AMENDMENT. Section 43-35-19.2 of the North Dakota Century Code is amended and reenacted as follows:

43-35-19.2. Standards for installation of monitoring wells - Reports required.

All monitoring wells constructed must comply with the rules adopted by the ~~state department of health~~department of environmental quality and the board. Each monitoring well contractor shall furnish all reports required by the rules of the ~~state department of health~~department of environmental quality or the board.

SECTION 48. AMENDMENT. Section 43-35-20 of the North Dakota Century Code is amended and reenacted as follows:

43-35-20. Revocation or suspension of certificate - Grounds for - How reinstated.

The board may suspend or revoke any certificate issued under the ~~provisions of this chapter if the holder is found guilty by the board of any violation of the rules adopted by the state department of health~~department of environmental quality or the board after a hearing ~~duly~~ held substantially in conformance with chapter 28-32. Six months after any certificate has been revoked, an application may be made for another certificate in the same manner as a new certificate is obtained.

SECTION 49. AMENDMENT. Section 43-35-23 of the North Dakota Century Code is amended and reenacted as follows:

43-35-23. Continuing education - Preapproval requirements.

Each certificate holder shall earn at least six hours of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the ~~state department of health~~department of environmental quality, the state water commission, or by any board-approved course provider. A continuing education course must be preapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request preapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells. A certificate holder may request approval of

education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

⁹⁰ **SECTION 50. AMENDMENT.** Subsection 11 of section 43-48-03 of the North Dakota Century Code is amended and reenacted as follows:

11. Personnel of the division of laboratory services of the state department of health or department of environmental quality who are participating in the centers for disease control and prevention's chemical terrorism toxic metals determination program.

⁹¹ **SECTION 51. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

43-62-01. Definitions.

1. "Board" means the North Dakota medical imaging and radiation therapy board ~~of examiners~~.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of ~~certification~~ of medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, x-ray operator, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.
7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.

⁹⁰ Section 43-48-03 was also amended by section 1 of Senate Bill No. 2202, chapter 297.

⁹¹ Section 43-62-01 was also amended by section 1 of Senate Bill No. 2198, chapter 295.

8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

⁹² **SECTION 52. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

43-62-03. Exemptions.

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.
4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.
6. ~~A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.~~
7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
- ~~8-7.~~ Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3.

⁹³ **SECTION 53. AMENDMENT.** Subsection 1 of section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:
 - a. Nuclear medicine technologist.
 - b. Radiation therapist.
 - c. Radiographer.

⁹² Section 43-62-03 was also amended by section 3 of Senate Bill No. 2198, chapter 295.

⁹³ Section 43-62-15 was also amended by section 9 of Senate Bill No. 2198, chapter 295.

- d. Radiologist assistant.
- e. Sonographer.
- f. X-ray operator.

⁹⁴ **SECTION 54. AMENDMENT.** Subsection 3 of section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or department of environmental quality or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.

SECTION 55. AMENDMENT. Section 44-04-32 of the North Dakota Century Code is amended and reenacted as follows:

44-04-32. Animal feeding operation record requests.

The ~~state department of health~~department of environmental quality shall keep a written record of each individual who requests information and the type of information requested regarding an animal feeding operation permit. Within seven business days of receiving the request, the department shall provide written notice to the owner and operator of the animal feeding operation describing the type of information that has been requested and the name and address of the requester. If an individual makes inquiries on more than three files in any one request, the department shall charge the individual a fee sufficient to cover the cost of mailing the notice to the owners and operators whose files are being examined and a fee for copying the records as allowed under section 44-04-18.

SECTION 56. Subdivision v of subsection 1 of section 54-06-04 the North Dakota Century Code is created and enacted as follows:

- v. Department of environmental quality.

⁹⁵ **SECTION 57. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4.1-05-02, 4.1-26-02, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23, 23-01-02, ~~23-25-02~~23.1-01-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, and 61-02-04, ~~and 61-28-03~~, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.

⁹⁴ Section 44-04-18.4 was also amended by section 2 of House Bill No. 1090, chapter 239, section 1 of House Bill No. 1108, chapter 309, and section 1 of Senate Bill No. 2295, chapter 312.

⁹⁵ Section 54-07-01.2 was also amended by section 3 of House Bill No. 1135, chapter 335.

- c. The dairy promotion commission.
- d. The state banking board.
- e. The state credit union board.
- f. The advisory board of directors to the Bank of North Dakota.
- g. The pardon advisory board.
- h. The state parole board.
- i. The state board of public school education.
- j. The education standards and practices board.
- k. The board of trustees of the teachers' fund for retirement.
- l. The state game and fish advisory board.
- m. The health council.
- n. The ~~air-pollution-control~~environmental review advisory council.
- o. The board of animal health.
- p. The administrative committee on veterans' affairs.
- q. The committee on aging.
- r. The committee on employment of people with disabilities.
- s. The commission on the status of women.
- t. The North Dakota council on the arts.
- u. The state historical board.
- v. The state water commission.
- w. The state water pollution control board.

SECTION 58. AMENDMENT. Subsection 3 of section 54-12-08 of the North Dakota Century Code is amended and reenacted as follows:

3. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, department of environmental quality, and the state hospital.

SECTION 59. AMENDMENT. Section 54-44.3-30 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-30. Agencies subject to merit system.

All personnel employed by the department of human services, the regional offices of that department, job service North Dakota, North Dakota human resource management services, the state department of health, department of environmental quality, and other agencies or political subdivisions as may by federal law or rule be required to be subject to a merit system in order to obtain federal grants-in-aid are covered by the merit system provided in this chapter. Merit system coverage must also be provided to personnel employed as purchasing agents or buyers in the purchasing division of the office of management and budget. Other agencies, departments, or divisions and positions must be placed under a merit system in the manner and to the extent required by law.

SECTION 60. AMENDMENT. Subsection 33 of section 57-43.2-01 of the North Dakota Century Code is amended and reenacted as follows:

33. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the ~~state department of health pursuant to the provisions of section 19-10-10~~department of environmental quality under chapter 23.1-13, as well as all liquids determined by the ~~state department of health~~department of environmental quality to be heating oil pursuant to the provisions of section ~~19-10-10~~under chapter 23.1-13, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section ~~19-16.1-02~~23.1-14-02.

SECTION 61. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

58-03-11. Establishment of zoning districts - Uniformity.

For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the ~~state department of health~~department of environmental quality as provided in section ~~23-20.3-03~~23.1-04-04.

SECTION 62. AMENDMENT. Section 58-03-11.1 of the North Dakota Century Code is amended and reenacted as follows:

58-03-11.1. Farming and ranching regulations - Requirements - Limitations - Definitions.

1. For purposes of this section:
 - a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
 - b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
 - (1) The production of timber or forest products; or
 - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
 - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
 - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the state department of health department of environmental quality.
2. For purposes of this section, animal units are determined as follows:
 - a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
 - b. One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;
 - c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
 - d. One cow-calf pair equals 1.0 animal unit;
 - e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
 - f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
 - g. One horse equals 2.0 animal units;
 - h. One sheep or lamb equals 0.1 animal unit;

- i. One turkey equals 0.0182 animal unit;
 - j. One chicken, other than a laying hen, equals 0.008 animal unit;
 - k. One laying hen equals 0.012 animal unit;
 - l. One duck equals 0.033 animal unit; and
 - m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
 4. A regulation may not preclude the development of a concentrated feeding operation in the township.
 5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
 6. A board of township supervisors may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
 7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
 8.
 - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
 - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
 - c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-1123.1-06-15.
 - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

SECTION 63. AMENDMENT. Section 58-03-17 of the North Dakota Century Code is amended and reenacted as follows:

58-03-17. Regulation of concentrated animal feeding operations - Central repository.

1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a township after July 31, 2007, is not effective until filed with the ~~state department of health~~department of environmental quality for inclusion in the central repository established under section ~~23-04-3023.1-01-10~~. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the ~~state department of health~~department of environmental quality for inclusion in the central repository.
2. For purposes of this section:
 - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
 - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

SECTION 64. AMENDMENT. Subsection 13 of section 58-06-01 of the North Dakota Century Code is amended and reenacted as follows:

13. To request assistance from a county or district board of health or the ~~state department of health~~department of environmental quality.

SECTION 65. AMENDMENT. Section 61-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-04. North Dakota atmospheric resource board created - Membership.

There is hereby created a North Dakota atmospheric resource board which shall be a division of the state water commission. The board ~~shall be~~ composed of the director of the state aeronautics commission, a representative of the ~~department of environmental section of the state department of health~~quality, the state engineer, and one additional board member from each of seven districts established by section 61-04.1-05. The governor shall initially appoint one board member for each of the seven districts from a list of three candidates given to the governor by weather modification authorities in each district and:

1. When the term of office of any board member from any district is about to expire.
2. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.

Beginning on July 1, 1983, the term of office for the board shall be arranged so that not less than three nor more than four terms shall expire on the first day of July of each odd-numbered year. Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V, and VII shall serve for four-year terms. Thereafter, board members from each district shall serve for a four-year term of office except in the event the governor shall appoint a member for an unexpired term, in which case the member shall serve only for the unexpired portion of the term. In the event any district fails to furnish a list to the governor, or if there are no weather modification authorities under this chapter within a district, the ~~then~~ governor shall appoint a board member of the governor's choice residing within such district.

SECTION 66. AMENDMENT. Subsection 1 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Board" means the state water pollution control board~~ "Council" means the environmental review advisory council.

SECTION 67. AMENDMENT. Subsection 2 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~"Department" means the state department of health~~ department of environmental quality.

SECTION 68. AMENDMENT. Subsection 2 of section 61-28.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~"Department" means the state department of health~~ department of environmental quality.

SECTION 69. AMENDMENT. Subsection 15 of section 61-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

15. Designate the ~~state department of health~~ department of environmental quality as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.

SECTION 70. AMENDMENT. Subsection 2 of section 61-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the ~~state department of health~~ department of environmental quality. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans,

specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund.

SECTION 71. AMENDMENT. Section 61-29-04 of the North Dakota Century Code is amended and reenacted as follows:

61-29-04. Administration.

This chapter must be administered by a Little Missouri River commission composed of the director of the parks and recreation department, the ~~state health officer~~ director of the state department of health department of environmental quality, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley County representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

SECTION 72. AMENDMENT. Section 61-33-09 of the North Dakota Century Code is amended and reenacted as follows:

61-33-09. Members of the board - Organization - Meetings.

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of the parks and recreation department, the director of the game and fish department, and the ~~state health officer~~ director of the department of environmental quality, or their representatives.

2. The state engineer is the board's secretary.
3. The board shall meet at least once a year or at the call of the state engineer or two or more members of the board. The board shall meet at the office of the state engineer or at any other place decided upon by the board.
4. The board may adopt rules to govern its activities.

SECTION 73. AMENDMENT. Section 61-35-24 of the North Dakota Century Code is amended and reenacted as follows:

61-35-24. Not exempt from other requirements.

This chapter does not exempt any district from the requirements of any other statute, ~~whether enacted before or after August 1, 1995,~~ under which the district is required to obtain the permission or approval of, or to notify, the ~~state water commission, or the state department of health~~ department of environmental quality, or any other agency of this state or of any of its political subdivisions before proceeding with construction, acquisition, operation, enlargement, extension, or alteration of any works or facilities that the district is authorized to undertake under this chapter.

⁹⁶ **SECTION 74. REPEAL.** Chapters 19-10 and 19-16.1 and sections 23-01-01.2, 23-01-04.1, 23-01-23, 23-01-30, and 23-01-36 and chapters 23-20, 23-20.1, 23-20.3, 23-20.5, 23-25, 23-26, 23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26 and sections 61-28-03 and 61-28-05 of the North Dakota Century Code are repealed.

SECTION 75. EFFECTIVE DATE. Sections 2 through 74 of this Act are effective upon the receipt by the legislative council of the certification by the chief of the environmental health section of the state department of health attesting that all necessary federal approvals have been obtained and all necessary federal and other agreements have been amended to ensure the state will continue to meet the primacy requirements it currently satisfies after the transfer of authority, powers, and duties from the state department of health to the department of environmental quality provided under this Act.

Approved April 7, 2017

Filed April 7, 2017

⁹⁶ Section 39-26-02 was amended by section 2 of House Bill No. 1352, chapter 203; section 39-26-04 was amended by section 3 of House Bill No. 1352, chapter 203; section 39-26-06 was amended by section 4 of House Bill No. 1352, chapter 203; section 39-26-07 was amended by section 5 of House Bill No. 1352, chapter 203; section 39-26-08 was amended by section 6 of House Bill No. 1352, chapter 203.

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 200

SENATE BILL NO. 2109

(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to amend and reenact section 24-02-02.3 of the North Dakota Century Code, relating to agreements with tribal governments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-02.3 of the North Dakota Century Code is amended and reenacted as follows:

24-02-02.3. Director may enter agreements with tribal governments.

Notwithstanding the provisions of chapter 54-40.2, the director may enter agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges on the state highway system. ~~The agreements must be limited to those necessary to meet federal highway program spending requirements.~~

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 201

HOUSE BILL NO. 1111

(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to create and enact section 24-02-02.4 of the North Dakota Century Code, relating to agreements with the metro flood diversion authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 24-02-02.4 of the North Dakota Century Code is created and enacted as follows:

24-02-02.4. Agreement for the construction of the Fargo Moorhead metropolitan area flood risk management project impacting the state highway system.

The director may enter an agreement with the metro flood diversion authority regarding the portion of the construction of the Fargo Moorhead metropolitan area flood risk management project which will impact the state highway system. The agreement must address the construction and maintenance of the parts of the project which need to be constructed and maintained on the state highway system.

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

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 202

HOUSE BILL NO. 1110

(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to create and enact section 24-02-49 of the North Dakota Century Code, relating to cooperative agreements with private entities for the construction of certain items on the state highway system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 24-02-49 of the North Dakota Century Code is created and enacted as follows:

24-02-49. Cooperative agreements with private entities for the construction of certain items on the state highway system.

Notwithstanding any other provision of law, the director may enter a cooperative agreement with a private entity for the construction of an item on the state highway system which will benefit the private entity and the traveling public, as determined by the director. The items requested to be added to the state highway system must be paid for in advance of the construction by the private entity before the department can construct the project. Funds received by the department pursuant to this section must be deposited in the state highway fund as prescribed by section 24-02-41 and are appropriated to the department. If the department requires engineering or contracting services for a project under this section, it may provide the services or procure the services in accordance with section 24-02-07.3 and 24-02-17.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 203

HOUSE BILL NO. 1352

(Representatives M. Johnson, Rick C. Becker, Dockter, Kading, B. Koppelman, Lefor,
Owens, Steiner)
(Senators Campbell, Casper, Clemens)

AN ACT to amend and reenact sections 24-03-23, 39-26-02, 39-26-04, 39-26-06,
39-26-07, and 39-26-08 of the North Dakota Century Code, relating to custody
and disposition of abandoned motor vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁷ **SECTION 1. AMENDMENT.** Section 24-03-23 of the North Dakota Century Code is amended and reenacted as follows:

24-03-23. Encroachments on state highways.

No part of the right of way for state highways may be encroached upon by erection thereon of ~~any~~ structure, or placing thereon any personal property, other than a temporary parking of a motor vehicle, without a written permit from the director. ~~Any~~An encroachment may be caused to be removed, obliterated, or corrected by order of the director and the total cost thereof must be paid by the person responsible for the encroachment. Property other than motor vehicles left upon highway right of way for a period exceeding seventy-two hours, the ownership of which cannot be determined after reasonable effort has been made to do so, must be deemed abandoned and may be removed from the right of way and stored at the nearest site available for thirty days and if it is not claimed by the owner during such period, and the cost of removal and storage paid, it may be disposed of in the manner prescribed by the director. Abandoned motor vehicles are subject to the provisions of sections 39-26-01 through 39-26-11. If such property is disposed of it must, except as otherwise provided by this section, be sold or disposed of in the manner provided in sections 39-26-05 through 39-26-09. The receipts therefrom must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the ~~permanent school~~common schools trust fund unless a commercial towing service lawfully disposes of the abandoned motor vehicle.

⁹⁸ **SECTION 2. AMENDMENT.** Section 39-26-02 of the North Dakota Century Code is amended and reenacted as follows:

39-26-02. Definitions.

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

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts, or ~~has remained for a~~

⁹⁷ Section 24-03-23 was also amended by section 31 of Senate Bill No. 2327, chapter 199.

⁹⁸ Section 39-26-02 was repealed by section 74 of Senate Bill No. 2327, chapter 199.

~~period of more than forty-eight hours located~~ on private property without consent of the person in control of such property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 39-26-10. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.

2. "Collector" means the owner of one or more special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest vehicles or parts thereof for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.
3. "Commercial towing service" means a registered business in North Dakota that tows motor vehicles.
4. "Department" means the state department of health.
- 4-5. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
- 5-6. "Special interest vehicle" means a motor vehicle which is at least twenty years old and which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- 6-7. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
- 7-8. "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

⁹⁹ **SECTION 3. AMENDMENT.** Section 39-26-04 of the North Dakota Century Code is amended and reenacted as follows:

39-26-04. Custody of abandoned vehicle.

Units of government may take into custody and impound any abandoned motor vehicle. If requested by an owner, lessee, tenant, or occupant of private property, a commercial towing service may remove and take into custody an abandoned motor vehicle located on the private property.

¹⁰⁰ **SECTION 4. AMENDMENT.** Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

39-26-06. Notice to owner of abandoned vehicle.

⁹⁹ Section 39-26-04 was repealed by section 74 of Senate Bill No. 2327, chapter 199.

¹⁰⁰ Section 39-26-06 was repealed by section 74 of Senate Bill No. 2327, chapter 199.

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale/disposal of the vehicle ~~at a public auction~~ pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.

¹⁰¹ **SECTION 5. AMENDMENT.** Section 39-26-07 of the North Dakota Century Code is amended and reenacted as follows:

39-26-07. Right of owner to reclaim abandoned vehicle.

1. The owner, secured parties, or any lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from the unit of government taking ~~it~~the motor vehicle into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within ~~fifteen~~thirty days after the date of the notice required by section 39-26-06.
2. The owner, secured parties, or a lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from a commercial towing service taking the motor vehicle into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within thirty days after receipt of the notice required by section 39-26-06.
- ~~2-3.~~ Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned passenger vehicle, pickup, van, or truck that does not exceed twenty thousand registered gross weight pounds [9071.85 kilograms].
4. Nothing in this chapter may be construed to impair any lien of a garagekeeper under the laws of this state or the right of a lienholder or secured parties to foreclose. For the purposes of this section, "garagekeeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.

¹⁰² **SECTION 6. AMENDMENT.** Section 39-26-08 of the North Dakota Century Code is amended and reenacted as follows:

¹⁰¹ Section 39-26-07 was repealed by section 74 of Senate Bill No. 2327, chapter 199.

¹⁰² Section 39-26-08 was repealed by section 74 of Senate Bill No. 2327, chapter 199.

39-26-08. Public sale ~~Disposal of vehicle~~ - Disposition of proceeds.

1. An abandoned motor vehicle not more than seven model years of age taken into custody by a unit of government and not reclaimed under section 39-26-07 must be sold to the highest bidder at public auction or sale, following reasonable published notice thereof. The purchaser must be given a receipt in a form prescribed by the department which shall be sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.
2. ~~From the proceeds of the sale of an abandoned motor vehicle, the unit of government shall reimburse itself for the cost of towing, preserving, and storing the vehicle, and all notice and publication costs incurred pursuant to this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the permanent school fund. If a commercial towing service takes custody of an abandoned motor vehicle and the vehicle is not reclaimed under section 39-26-07, the commercial towing service may obtain a release from the department of transportation which is sufficient title to dispose of the vehicle. The release entitles the commercial towing service to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on the abandoned vehicle must be removed and destroyed upon receipt of the new title.~~
3. ~~From the proceeds of the sale of an abandoned motor vehicle, the unit of government or the commercial towing service may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.~~

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 204

SENATE BILL NO. 2197

(Senators Erbele, Vedaa, Dotzenrod)
(Representatives Beadle, Pyle, Vetter)

AN ACT to amend and reenact sections 24-05-04 and 48-01.2-07 of the North Dakota Century Code, relating to highway improvement contracts to be advertised; and to repeal section 24-05-04.2 of the North Dakota Century Code, relating to contracts for road construction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-05-04 of the North Dakota Century Code is amended and reenacted as follows:

24-05-04. Contracts to be advertised - Road construction - Requirements for rental contracts.

1. If a contract for a highway improvement exceeds one hundred thousand dollars, the board of county commissioners shall seek bids by publishing an advertisement at least once each week for two consecutive weeks in the official newspaper of the county and in other newspapers as the board deems advisable. The first publication must be made at least fifteen days before the day set for the opening of the bids. For any contract for a highway improvement that exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors.
2. A purchase of county road machinery and any rental contract or agreement for the use of road machinery and other articles, except necessary repairs for road machinery, which exceeds the sum of fifty thousand dollars must be advertised as provided by law for the purchase of county supplies by publishing an advertisement for bids at least once each week for two consecutive weeks in the official newspaper of the county and in any other newspapers as the board deems advisable. The first publication must be made at least fifteen days before the day set for the opening of the bids. The board of county commissioners may not enter a rental contract or agreement for the use of road machinery and other articles for a longer period than twelve months from the date of the rental contract or agree to pay rental for the use of road machinery and other articles which would result in the lessor receiving rental at a rate in excess of twenty percent per year of the cash sale price of the road machinery or other articles. The cash sale price of the road machinery and other articles must be clearly set forth in any rental contract for road machinery and other articles and failure to include this data in any rental contract for the use of road machinery and other articles renders the rental contract void. A payment made under a void rental contract is recoverable from the county commissioners making the contract, jointly and severally.
- 2-3. Notwithstanding the provisions of this section relating to the duration of rental contracts, the board of county commissioners may enter lease-purchase agreements for the road machinery and articles covered by this section if

those agreements provide for the complete performance and full payment of the purchase price of the machinery or articles within seven years from the date of the execution of the lease-purchase agreement according to section 44-08-01.1.

4. Bids received under this section must be opened and awarded under the procedure provided in section 48-01.2-07.

SECTION 2. AMENDMENT. Section 48-01.2-07 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-07. Opening of bids - Award of contract.

At the time and place specified in the notice, a governing body or its designated agent shall open publicly and read aloud each responsible bid received ~~and~~. The governing body shall award the contract to the lowest responsible bidder. A governing body may reject any and all bids and readvertise for bids if no bid is satisfactory or if the governing body determines any agreement has been entered by the bidders or others to prevent competition. The governing body may advertise for new bids in accordance with this chapter until a satisfactory bid is received.

SECTION 3. REPEAL. Section 24-05-04.2 of the North Dakota Century Code is repealed.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 205

SENATE BILL NO. 2278

(Senators Campbell, Rust, Dotzenrod)
(Representatives Lefor, Maragos, Owens)

AN ACT to amend and reenact section 24-06-31 of the North Dakota Century Code, relating to the obstruction of a highway.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-06-31 of the North Dakota Century Code is amended and reenacted as follows:

24-06-31. Obstructions in highway.

Each overseer of highways having personal knowledge, or on being notified in writing, of any obstruction in the highway or public street in the overseer's district immediately shall remove or cause any such obstruction to be removed. The overseer's district may seek recovery of costs incurred for the removal of any obstruction from the individual who is responsible for causing or placing any obstruction in the highway or public street. If the individual responsible is an adjacent landowner, the removal cost may become a part of the taxes to be levied against the landowner for the ensuing year to be collected in the same manner as other real estate taxes are collected.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 206

HOUSE BILL NO. 1255

(Representatives D. Ruby, Owens, Weisz)
(Senators Campbell, Laffen)

AN ACT to create and enact a new chapter to title 24 and a new subsection to section 39-12-05.3 of the North Dakota Century Code, relating to the creation of a large truck primary highway network and the permitting of increased vehicle weights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 24 of the North Dakota Century Code is created and enacted as follows:

Primary network.

The department of transportation shall establish a limited transportation network within this state. The initial network consists of selected highways and the interstate system to serve as the foundation for this system. The department may modify the foundation through a public involvement process established by the department. The foundation for the system consists of:

1. United States highway 83 from the South Dakota border to Minot;
2. United States highway 85 from the South Dakota border to Williston;
3. United States highway 52 from Minot to the Canadian border;
4. United States highway 2 from the Montana border to the Minnesota border;
5. Interstate highway 94 from the Montana border to the Minnesota border, subject to federal approval; and
6. Interstate highway 29 from the South Dakota border to the Canadian border, subject to federal approval.

Process for modification.

1. The department of transportation shall establish a process to adjust the network by adding specific segments of the United States or state highway system. The process must include an advisory committee to provide input to the department in actions taken to adjust the system, taking into consideration the economic needs and benefits, investment and maintenance requirements, and safety.
2. The department shall establish a request mechanism for commercial entities and for individuals who reside in the state to request specific augmentations of the system based on economic need and outcomes.

Advisory committee.

1. The advisory committee must be chaired by the director of the department of transportation or a designee of the director and must consist of a representative appointed by:
 - a. The greater North Dakota chamber;
 - b. The North Dakota association of counties;
 - c. The agriculture commissioner;
 - d. The commerce commissioner;
 - e. The superintendent of the highway patrol;
 - f. The North Dakota motor carriers association;
 - g. The North Dakota league of cities; and
 - h. Representatives of short line railroads operating in this state.
2. The committee may be augmented by the department as deemed necessary in consultation with the advisory committee.

Conditional approval for interstate highway system within North Dakota.

The department may include the interstate highway system within the state as part of the primary foundation network if approved through passage of legislation by the Congress of the United States.

Authority to establish truck axle configuration and weight limits associated with the one hundred twenty-nine thousand pound network.

Notwithstanding any other provision of law, the department of transportation, in consultation with the advisory committee, may adopt rules to establish the required axle configurations and weight limit requirements for trucks weighing more than one hundred five thousand five hundred pounds [47854 kilograms] utilizing the network established by this chapter.

Preservation of existing truck weight provisions.

This chapter does not modify or authorize any change to the existing weight limitations for trucks with gross vehicle weight up to one hundred five thousand five hundred pounds [47854 kilograms].

¹⁰³ **SECTION 2.** A new subsection to section 39-12-05.3 of the North Dakota Century Code is created and enacted as follows:

The director may issue a permit for a truck with a gross weight that exceeds one hundred five thousand five hundred pounds [47854.00 kilograms], not to exceed one hundred twenty nine thousand pounds [58513.41 kilograms]. The monthly permit fee is one hundred dollars per month or seven hundred dollars annually. Vehicle weight under this subsection is determined according to the formula under subsection 2 of section 39-12-05.

Approved April 10, 2017

Filed April 10, 2017

¹⁰³ Section 39-12-05.3 was also amended by section 1 of House Bill No. 1321, chapter 272.

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 207

HOUSE BILL NO. 1134

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 25-01.2-01, 25-01.2-03, 25-01.2-04, 25-01.2-05, 25-01.2-06, 25-01.2-08, 25-01.2-09, 25-01.2-10, 25-01.2-11, 25-01.2-12, 25-01.2-14, 25-01.2-15, 25-01.2-16, and 25-04-02.1, subsection 4 of section 25-04-05, subsection 2 of section 25-16-01, section 25-16-04, subsection 2 of section 25-16.1-01, section 25-16.1-03, and subsection 2 of section 25-18-01 of the North Dakota Century Code, relating to updating definitions and code sections to reflect person first language, updating language to reflect rights of the developmentally disabled, applying and removing restrictions on individuals with developmental disabilities, and to clarify inspection of facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁴ **SECTION 1. AMENDMENT.** Section 25-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Applicant" means an entity that has requested licensure from the department.
2. "Department" means the department of human services.
3. "Developmental disability" means a severe, chronic disability of an individual which:
 - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the individual attains age twenty-two;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity:

¹⁰⁴ Section 25-01.2-01 was also amended by section 1 of Senate Bill No. 2041, chapter 208.

- (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and
- e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
4. "Individualized setting" means a setting where an individual owns or rents the individual's residence and a public or private agency or organization provides services to an individual with a developmental disability.
- 2-5. "Institution or facility" means any school, hospital, residence center, group home, or any other facility setting operated by any public or private agency, or organization, or institution, which that provides services to an individual with a developmental disability.
- 3-6. "Least restrictive appropriate setting" means that setting which that allows thean individual with a developmental disability to develop and realize the individual's fullest potential and enhances the individual's ability to cope with the individual's environment without unnecessarily curtailing fundamental personal liberties.
7. "License" means authorization by the department to provide services to individuals with developmental disabilities, pursuant to chapter 25-16.
- 4-8. "Service or services forto an individual with a developmental disability" means services provided by any public or private agency, or organization, or institution, directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability.

SECTION 2. AMENDMENT. Section 25-01.2-03 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-03. Presumption of incompetence prohibited - Discrimination prohibited - Deprivation of constitutional, civil, or legal rights prohibited.

An individual with a developmental disability may not be presumed to be incompetent and may not be deprived of any constitutional, civil, or legal right solely because of admission to or residence at an institution or, facility, or individualized setting or solely because of receipt of services for to individuals with a developmental disability disabilities. However, nothing in this section may be construed to limit or modify section 16.1-01-04. The constitutional, civil, or legal rights which may not be varied or modified under the provisions of this section include:

1. The right to vote at elections;
2. The free exercise of religion;
3. The right of reasonable opportunities to interact with members of the opposite sex; and
4. The right to confidential handling of personal and medical records.

SECTION 3. AMENDMENT. Section 25-01.2-04 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-04. ~~Mail, telephone, and visitation~~ Communication rights — Application to residential institution or facility.

1. Except as provided in this section, every individual with a developmental disability who resides in a ~~mental health or developmental disabilities~~ institution or facility, or individualized setting has the right of private, unimpeded, and uncensored communication, including visitation, with persons of the resident's ~~individual's~~ choice by mail, telephone, and visitation.
- a-2. ~~The facility director~~ A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for private visitation is available shall document any restrictions of these rights in the individual's person-centered service plan.
- b-3. ~~The facility director~~ A public or private agency or organization not licensed by the department may establish in writing reasonable times and places for use of telephones and for visits, provided that a resident's an individual's ability to contact an attorney, guardian, or custodian, may not be restricted and provided that any rules or restrictions must be posted in each residential ~~institution, facility, or individualized setting.~~
4. A copy of any rules or restrictions must be given to all residents ~~individuals~~ individuals over eighteen years of age and, to the parents or custodians of all individuals under eighteen years of age, or guardian of all residents under eighteen years of age, upon admission.
2. This section ~~applies only with respect to an institution or facility that provides residential care.~~

SECTION 4. AMENDMENT. Section 25-01.2-05 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-05. ~~Personal property~~ — ~~Application to residential institution or facility.~~

1. Except in the ~~circumstances and under the conditions~~ as provided in this section subsection, every resident of an institution or facility individual with a developmental disability who resides in an institution, facility, or individualized setting must be permitted to receive, possess, and use lawful personal property and must be provided with a secure, convenient, and reasonable amount of storage space for that property.

- ~~1.2.~~ A public or private agency or organization providing services to an individual with a developmental disability may restrict the possession and use of certain classes of property which may be dangerous or may harm a residentan individual.
- ~~2.3.~~ Notice of any restrictions must be immediately given in writing to all residentsindividuals over eighteen years of age and, to the parents or custodian of all individuals under eighteen years of age, or guardian of all residents under eighteen years of age, upon admission.
- ~~3.4.~~ A restriction of the rights of an individual with a developmental disability which is imposed by a public or private agency or organization that provides services to the individual must be reviewed at least annually as part of the individual's individualized habilitation, person-centered service, or individual education plan team meeting.
- ~~5.~~ Unless a restriction applies universally, the restricting agency or organization shall remove the restriction placed on an individual with a developmental disability at the earliest point at which the individual demonstrates the ability to mitigate the need for the restriction.
- ~~6.~~ When a residentan individual is discharged from the institution or facilityservices provided from a public or private agency or organization, all of the resident'sindividual's lawful personal property whichthat is in the custody of the facilitypublic or private agency or organization must be returned to the residentindividual.

This section applies only with respect to an institution or facility that provides residential care.

- ~~7.~~ A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability shall document any restrictions of these rights in the individual's person-centered service plan.

SECTION 5. AMENDMENT. Section 25-01.2-06 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-06. Labor - Wages - Money - ~~Application to residential institution or facility.~~

~~A resident or service recipient may consent to perform labor for a service provider if the professional responsible for overseeing the implementation of that resident's individual habilitation plan determines that the labor would be consistent with that plan.~~

- ~~1.~~ An individual with a developmental disability who is receiving services from a public or private agency or organization must be permitted to seek employment and work in integrated settings if this is a desire of the individual.
- ~~2.~~ An individual with a developmental disability who performs labor whichthat is of any consequential economic benefit to a service providerpublic or private agency or organization shall receive wages whichthat are commensurate with the value of the work performed, in accordance with applicable federal and state laws and regulations. A residentAn individual of an institution, facility, or

individualized setting may be required to perform tasks of a personal housekeeping nature in the individual's living quarters without compensation.

- ~~2-3.~~ A resident~~An individual with a developmental disability~~ may use the resident's~~individual's~~ money as the resident~~individual~~ chooses, unless the resident~~individual~~ is a minor, or is prohibited from doing so under a court guardianship or conservatorship order, ~~or the use would be inconsistent with the resident's individual habilitation plan.~~ A minor ~~or a person under guardianship or conservatorship~~ may be required to deposit the person's money with the service provider, ~~or in a financial institution in the name of a parent, guardian, or conservator,~~ and may be permitted to use the money in accordance with written instructions of the parent, guardian, or conservator.
- ~~3-4.~~ A resident~~An individual with a developmental disability~~ may deposit money, or cause money to be deposited, in the resident's~~individual's~~ name with a financial institution of the resident's~~individual's~~ choice, or the resident~~individual~~ may deposit the money with a service provider~~public or private agency or organization~~. The ~~service provider~~public or private agency or organization may not retain any money deposited with the ~~service provider~~public or private agency or organization under this subsection, but shall hold all such funds in an account in the resident's~~individual's~~ name. All earnings attributable to a resident's~~an individual's~~ money shall~~must~~ accrue to the resident~~individual~~.
- ~~4-5.~~ No ~~service provider~~public or private agency or organization, nor any of the ~~service provider's~~public or private agency or organization's employees shall~~may~~ be made representative payee for a resident's social security, pension, annuity, trust fund, ~~or any other form of direct payment or assistance~~an individual without the resident's~~individual's~~ informed consent.
- ~~5-6.~~ When a ~~resident~~an individual is discharged, all of the resident's~~individual's~~ money, including earnings, shall~~must~~ be returned to the resident~~individual~~.

This section applies only with respect to an institution or facility that provides residential care

- ~~7.~~ A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability shall document any restrictions of these rights in the individual's person-centered service plan.

SECTION 6. AMENDMENT. Section 25-01.2-08 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-08. Medication - Chemical restraints.

~~No~~An individual with a developmental disability receiving services at any institution ~~or facility for individuals, or individualized setting from a public or private agency or organization with developmental disabilities~~ may at ~~any time~~not be administered at ~~any time~~ any drug or medication, or be chemically restrained or tranquilized in any manner, except upon the written authorization of a licensed physician, physician assistant, or advanced practice registered nurse when necessary and appropriate as an element of the service being received or as a treatment of any medical or physical condition in conformity with accepted standards for that treatment. The nature, amount of, and reasons for the administration of any drug or medication must be promptly recorded in the ~~person's~~individual's medical record. A public or private agency or organization licensed by the department to provide services to an

individual with a developmental disability shall document any restrictions of these rights in the individual's person-centered service plan.

SECTION 7. AMENDMENT. Section 25-01.2-09 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-09. Punishment - Isolation - Physical restraints - Psychosurgery - Sterilization - Shock treatment.

NoAn individual with a developmental disability receiving services at any institution or facility for individuals, or individualized setting from a public or private agency or organization with developmental disabilities may not at any time:

1. Be subjected to any corporal punishment.
2. Be isolated or secluded, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that individual or other individuals.
3. Be physically restrained in any manner, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that individual or to other individuals.
4. Be subjected to psychosurgery, sterilization, medical behavioral research, or pharmacological research, except in conformity with an order of a court of competent jurisdiction. Under no circumstances may an individual receiving treatment be subjected to hazardous or intrusive experimental research which is not directly related to the specific goals of that individual's treatment program.
5. Be subjected to electroconvulsive therapy or shock treatment without that individual's or guardian's written and informed consent. If the recipient of services is a minor, the recipient's parent, custodian, or guardian may provide informed consent for that treatment, which the parent, custodian, or guardian believes to be in the recipient's best interests.

SECTION 8. AMENDMENT. Section 25-01.2-10 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-10. Seclusion or physical restraint - Facility administrator~~Administrator~~ **to be notified.**

1. Whenever ~~a person~~an individual with a developmental disability receiving services from a public or private agency or organization not licensed by the department, is placed in seclusion or is physically restrained, the ~~facility~~public or private agency or organization administrator or the administrator's representative must be notified and shall determine if the isolation or restraint is necessary. The isolation or restraint may be continued only upon written order of the administrator or the administrator's representative and for a period of not more than twenty-four hours. Any ~~person~~individual who is in seclusion or who is physically restrained must be checked by an attendant at least once every thirty minutes.

2. A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability may not place an individual in seclusion. In order to use physical restraints, the restraint must be in compliance with the individual's person-centered service plan or done in accordance with the public or private agency's or organization's emergency restraint policy.

SECTION 9. AMENDMENT. Section 25-01.2-11 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing - Right to attorney at public expense ~~—Application to residential institution or facility.~~

A court of competent jurisdiction may issue the orders required for the procedures or treatments in subsection 4 of section 25-01.2-09 upon application of the party alleging the necessity of the procedure, the individual who is receiving or is entitled to receive the treatment, or the individual's parents or custodian of the individual under eighteen years of age, or guardian, following a hearing on the application.

1. The individual receiving or entitled to treatment shall:
 - a. Receive prior notice of the hearing;
 - b. Have the right and the opportunity to present evidence; and
 - c. Have the right to be confronted with and to cross-examine witnesses.
2. If the individual with a developmental disability is indigent, counsel shall be provided at public expense not less than ten days before the hearing.
3. The burden of proof is on the party alleging the necessity of the procedure or treatment.
4. An order allowing the procedure or treatment may not be granted unless the party alleging the necessity of the procedure or treatment proves by clear and convincing evidence that the procedure is in the best interest of the recipient and that no less drastic measures are feasible.

~~This section applies only with respect to an institution or facility that provides residential care.~~

SECTION 10. AMENDMENT. Section 25-01.2-12 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-12. Diet ~~—Application to residential institution or facility.~~

~~Every resident of any institution or facility must be provided with a nutritionally adequate and sufficient diet planned by a qualified dietician. This section applies only with respect to an institution or facility that provides residential care~~individual with a developmental disability receiving residential services in an institution, facility, or individualized setting, must be allowed access to food at any time and meal choices must be provided. Any public or private agency or organization licensed by the department to provide services to an individual with a developmental disability shall document in the individual's person-centered service plan any restrictions on access to or choice of food because of health and safety concerns.

SECTION 11. AMENDMENT. Section 25-01.2-14 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-14. Individualized habilitation, person-centered service, or individual education plan - Contents.

Any ~~institution, facility, public or private~~ agency, or organization that provides services for individuals ~~to an individual~~ with a developmental disability ~~shall~~ must have a written, individualized habilitation, ~~person-centered service, or individual educational plan developed and put into effect for each individual for whom that institution, facility, public or private~~ agency, or organization is primarily responsible for the delivery, or coordinating the delivery, of services. ~~A school must have an individual educational plan for each of its students with a developmental disability.~~ A plan required under this section must:

1. Be developed and put into effect within thirty days following admission of the individual.
2. Be reviewed and updated from time to time, but no less than annually.
3. Include a statement of the long-term habilitation or education goals for the individual and the intermediate objectives relating to the attainment of those goals. The objectives must be stated specifically, in sequence, and in behavioral or other terms that provide measurable indices of progress.
4. State an objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved.
5. Describe the personnel necessary for the provision of the services described in the plan.
6. Specify the date of initiation and the anticipated duration of each service to be provided.
7. State whether the individual with a developmental disability appears to need a guardian and determine the type of protection needed by the individual based on the individual's actual mental and adaptive limitations and other conditions which may warrant the appointment of a guardian. Any member of the individual habilitation, ~~person-centered service, or individual educational~~ plan team may petition, or notify any interested person of the need to petition, for a finding of incapacity and appointment of a guardian.

SECTION 12. AMENDMENT. Section 25-01.2-15 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-15. Right to refuse services.

An adult recipient of services, ~~or parents or custodian~~ if the recipient is a minor ~~or under guardianship, or the recipient's guardian or parent,~~ must be given the opportunity to refuse generally accepted ~~mental behavioral~~ health or developmental disability services, including medication, unless those services are necessary to prevent the recipient from causing serious harm to the recipient or to others. ~~The facility director shall inform all services are refused, the~~ recipient ~~or, guardian, or parent or custodian~~ of a minor ~~who refuses generally accepted services~~ must be informed of alternate services available, the risks of those alternate services, and the possible consequences to the recipient of the refusal of generally accepted services.

SECTION 13. AMENDMENT. Section 25-01.2-16 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-16. Notice of rights.

~~Every~~Any public or private agency or organization that provides services to an individual with a developmental disability in an institution or facility shall post conspicuously in public areas a summary of the rights which~~that~~ are set out in this chapter. In addition, upon commencement of services or as soon after commencement as the recipient's condition permits, every recipient who is eighteen years of age or older, the parents or custodian of all recipients under eighteen years of age, and the guardian of a ~~minor recipient or other recipient under guardianship~~ must be given written notice of the rights guaranteed by this chapter.

SECTION 14. AMENDMENT. Section 25-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

25-04-02.1. Accreditation of life skills and transition center.

The department of human services shall request appropriations and resources sufficient to ensure maintenance of the life skills and transition center's accreditation by the accreditation council on services for people with developmental disabilities and certification by the health care financing administration or by similar accrediting and certifying organizations and agencies possessing standards applicable to ~~handicapped individuals~~an individual with a developmental disability and disciplines needed to provide quality services to individuals served.

SECTION 15. AMENDMENT. Subsection 4 of section 25-04-05 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Parents of a handicapped patient~~an individual with a developmental disability, who is twenty-one years of age or under, are not required to file, assist in filing, agree to filing, or assign an insurance claim when filing the claim would pose a realistic threat that the parents would suffer a financial loss not incurred by similarly situated parents of nonhandicapped children with disabilities. Financial losses do not include incidental costs such as the time needed to file or assist in filing an insurance claim or the postage needed to mail the claim. Financial losses include:
 - a. A decrease in available lifetime coverage or any other benefit under an insurance policy.
 - b. An increase in premiums or the discontinuation of a policy.
 - c. An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim unless the life skills and transition center pays or waives the out-of-pocket expense.

SECTION 16. AMENDMENT. Subsection 2 of section 25-16-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Treatment or care center" means ~~any hospital, home, or other premises operated to provide relief, care, custody, treatment, day activity, work activity, or extended employment~~an entity providing services to individuals with a developmental disability~~disabilities and licensed by the department to provide services.~~

SECTION 17. AMENDMENT. Section 25-16-04 of the North Dakota Century Code is amended and reenacted as follows:

25-16-04. Inspection and report by department.

The department shall ~~may~~ inspect the facilities and premises of the applicant to determine ~~the premises are fit, safe, and~~ sanitary conditions ~~and the adequacy of medical and nursing services to provide quality care and treatment.~~

SECTION 18. AMENDMENT. Subsection 2 of section 25-16.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Treatment or care center" means ~~any hospital, home, or other premises, operated to provide relief, care, custody, treatment, day activity, work activity, or extended employment an entity providing services to individuals with developmental disabilities and licensed by the department to provide services.~~

SECTION 19. AMENDMENT. Section 25-16.1-03 of the North Dakota Century Code is amended and reenacted as follows:

25-16.1-03. Appointment of receiver.

The court shall appoint, as receiver, the executive director of the department who shall designate a qualified individual not employed by this state or its political subdivisions, or a nonprofit organization to execute the receivership. The receiver appointed by the court shall use the income and assets of the treatment or care center to maintain and operate the center and to attempt to correct the conditions which constitute a threat to the clients. The receiver may not liquidate the assets of the treatment or care center.

SECTION 20. AMENDMENT. Subsection 2 of section 25-18-01 of the North Dakota Century Code is amended and reenacted as follows:

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 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 to provide services.~~

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 208

SENATE BILL NO. 2041

(Legislative Management)
(Human Services Committee)

AN ACT to amend and reenact subsection 1 of section 25-01.2-01 of the North Dakota Century Code, relating to the definition of developmental disability; and to provide for a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁵ **SECTION 1. AMENDMENT.** Subsection 1 of section 25-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Developmental disability" means a severe, chronic disability of an individual which:
 - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including Down syndrome;
 - b. Is manifested before the individual attains age twenty-two;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and
 - e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

SECTION 2. DEPARTMENT OF HUMAN SERVICES MEDICAID WAIVER STUDY - REPORT TO LEGISLATIVE MANAGEMENT.

¹⁰⁵ Section 25-01.2-01 was also amended by section 1 of House Bill No. 1134, chapter 207.

1. During the 2017-18 interim, as part of the ongoing review of existing and potential Medicaid waivers performed by the department of human services, the department shall conduct a study of the current eligibility requirements for the developmental disability Medicaid waiver.
2. The study must include an analysis of whether the current developmental disability Medicaid waiver eligibility determination protocol uses age-appropriate assessment methods, uses assessment tools reliable and valid in nature for level of need determinations, and utilizes assessment information that may already be available in an individual's record.
3. The study must include an evaluation of the feasibility and desirability of including in the eligibility determination under the developmental disability Medicaid waiver, consideration of related conditions and the possible use of certain medical conditions, such as Down syndrome.
4. Before April 1, 2018, the department shall make a report to the legislative management on the outcome of this study, including any recommendations, together with any legislation required to implement the recommendations.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 209

HOUSE BILL NO. 1116

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 25-02-01.1 of the North Dakota Century Code, relating to the structure of the department of human services and changes in terminology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁶ **SECTION 1. AMENDMENT.** Section 25-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

25-02-01.1. Maintenance of state hospital accreditation - Governing body membership - Rulemaking authority.

1. The department of human services shall seek appropriations and resources sufficient to ensure maintenance of the state hospital's accreditation by the joint commission ~~on accreditation of health care organizations~~ and certification by the ~~health care financing administration centers for Medicare and Medicaid services~~ or by similar accrediting and certifying organizations and agencies possessing hospital standards recognized by the health care industry and accepted by the department.
2. The department, in consultation with the state hospital, shall create a state hospital governing body and shall by rules describe the powers and duties of the governing body. The department shall compensate members not employed by the department in the amount of one hundred dollars per day and reimburse members for expenses incurred in attending meetings in the amounts provided by sections 44-08-04 and 54-06-09.
3. The governing body must be composed of the executive director of the department of human services; the director of the division of ~~mental health services~~ behavioral health of the department, who shall serve as chairman of the governing body; the state hospital superintendent; the state hospital medical director; a representative of the ~~department's fiscal management of the state hospital administration division~~; a ~~mental health services~~ behavioral health services consumer selected by the mental health association; and a legislator selected by the legislative management. The governing body may include other persons as appointed by the governing body.

Approved April 5, 2017

Filed April 5, 2017

¹⁰⁶ Section 25-02-01.1 was also amended by section 6 of House Bill No. 1043, chapter 57.

CHAPTER 210

HOUSE BILL NO. 1187

(Representatives Delmore, P. Anderson, Schneider)
(Senator Kreun)

AN ACT to amend and reenact section 25-17-03 of the North Dakota Century Code, relating to the medical food program for phenylketonuria or maple syrup urine disease.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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. Notify responsible clinicians regarding cases with out-of-range screening results or positive confirmatory-diagnostic testing results in order to facilitate access to appropriate treatment. If the responsible clinician is not a licensed clinician, the responsible clinician shall refer the patient to a licensed clinician for appropriate followup care.
2. Refer every diagnosed case of a metabolic disease or genetic disease to a licensed clinician for necessary treatment.
3. Maintain a registry of cases of metabolic diseases and genetic diseases.
4. Provide medical food at no cost to males under age ~~twenty-two~~twenty-six 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~~twenty-six 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~~twenty-six who are receiving medical assistance and are diagnosed with phenylketonuria or maple syrup urine disease.

Approved March 21, 2017

Filed March 22, 2017

INSURANCE

CHAPTER 211

SENATE BILL NO. 2103

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-01-04 and 26.1-01-07 and subsection 2 of section 26.1-15.1-35 of the North Dakota Century Code, relating to fees chargeable by the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-04. Service of process upon commissioner - Procedure.

When a consent to service of any process, notice, order, or demand upon the commissioner is provided under this title, the service is to be in duplicate. The commissioner immediately shall forward one copy by registered mail to the person against whom the process, notice, order, or demand is directed at that person's last reasonably ascertainable address and shall file the other copy in the office of the commissioner. ~~The person serving process upon the commissioner shall pay the fee provided in section 26.1-01-07.~~ The commissioner shall keep a record of the date and hour of service.

SECTION 2. AMENDMENT. Section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07. Fees chargeable by commissioner.

1. The commissioner shall charge and collect the following fees:
 - 1- a. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.
 - 2- b. For each original certificate of authority issued upon admittance and for each annual renewal thereof, one hundred dollars and for ~~renewal of certificate of authority~~, amendment to certificate of authority, or certified copy thereof, fifty dollars.
 - 3- c. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.
 - 4- d. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, twenty-five one hundred dollars.

5. ~~For filing bylaws or amendments thereof, ten dollars.~~
6. For filing of articles of merger, or copies thereof, thirty dollars.
7. ~~For receiving the service of process as attorney, whether the commissioner is served with the process or admits service thereon, ten dollars.~~
8. ~~For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars.~~
9. e. For filing an annual statement, twenty-five dollars.
10. f. For filing the abstract of the annual statement of an insurance company for publication, thirty dollars.
11. g. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including actual travel expenses, including hotel and other living expenses, compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.
12. h. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits and for any renewal of the certificate, ~~ten~~twenty-five dollars.
13. i. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which must be paid to the testing service.
14. j. For issuing a surplus lines insurance producer's or insurance consultant's license, one hundred dollars. For each annual renewal of a surplus lines insurance producer's or insurance consultant's license, twenty-five dollars.
15. k. For issuing an insurance producer's license, one hundred dollars.
16. l. For issuing a duplicate of any license or registration issued under this title, ten dollars.
17. ~~For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.~~
18. ~~For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.~~
19. ~~For a copy of any paper filed in the commissioner's office, twenty cents per folio.~~

- ~~20. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.~~
- ~~21. m.~~ For each insurance company appointment and renewal of an appointment of an insurance producer, ten dollars.
- ~~22. n.~~ For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.
- ~~23. o.~~ For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.
- ~~24. p.~~ For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.
- ~~25. q.~~ For issuing and each annual renewal of a license to an advisory organization, fifty dollars.
- ~~26. r.~~ For filing an individual insurance producer licensing continuation, twenty-five dollars.
2. Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subsections 2, 10, 11, 15, 18, 19, and 20 subdivisions b, f, g, and k of subsection 1.
3. However, the commissioner may, after public notice and hearing, increase the fees authorized by this section for any year if it is determined necessary to generate the revenue appropriated by the legislative assembly from the insurance regulatory trust fund to fund budgeted operations for the insurance department. The insurance commissioner may not implement a fee increase pursuant to this section to enhance or in any manner add funds to the legislative appropriation for the insurance department.

SECTION 3. AMENDMENT. Subsection 2 of section 26.1-15.1-35 of the North Dakota Century Code is amended and reenacted as follows:

2. Service may be made only upon the commissioner or upon any person in charge of the commissioner's office. It must be made in duplicate and constitutes sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forthwith forward one of the duplicate copies by registered mail, postage prepaid, directed to the secretary or corresponding officer. No service may require a society to file its answer, pleading, or defense in less than twenty days from the date of mailing the copy of the service to a society. Legal process may not be served upon a society except in the manner herein provided. ~~At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner the fee specified in section 26.1-01-07.~~

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 212

HOUSE BILL NO. 1112

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-02.1-01, 26.1-02.1-02.1, 26.1-26-15, and 26.1-26-39 of the North Dakota Century Code, relating to licensing and insurance producers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-01. Definitions.

As used in this chapter:

1. "Breach of trust" means any criminal act or an element of a criminal act by a person, including an act that constitutes or involves misuse, misapplication, or misappropriation of the following:
 - a. Anything of value held as a fiduciary, in which "fiduciary" includes a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director, or public service; or
 - b. Anything of value of any public, private, or charitable organization.
2. "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or who are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf. The term does not include the activities of the North Dakota life and health insurance guaranty association or the North Dakota insurance guaranty association.
3. "Dishonesty" means a criminal act, including an offense constituting or involving perjury, bribery, arson, knowingly receiving or possession of stolen property, forgery or falsification of documents, counterfeiting, knowingly issuing a bad check, false or misleading oral or written statements, false pretenses, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations, or the failure to disclose material facts.
- ~~2-4.~~ "Financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments.
- ~~3-5.~~ "Fraudulent insurance act" includes the following acts or omissions committed by a person knowingly and with intent to defraud:
 - a. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, reinsurer, insurance producer,

or any agent thereof, false or misleading information as part of, in support of, or concerning a fact material to one or more of the following:

- (1) An application for the issuance or renewal of an insurance policy or reinsurance contract;
 - (2) The rating of an insurance policy or reinsurance contract;
 - (3) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
 - (4) Premiums paid on an insurance policy or reinsurance contract;
 - (5) Payments made in accordance with the terms of an insurance policy or reinsurance contract;
 - (6) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
 - (7) The financial condition of an insurer or reinsurer;
 - (8) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
 - (9) The issuance of written evidence of insurance;
 - (10) The reinstatement of an insurance policy; or
 - (11) The formation of an agency, brokerage, or insurance producer contract.
- b. Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.
 - c. Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance.
 - d. Theft by deception or otherwise, or embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance.
 - e. Attempting to commit, aiding or abetting in the commission of, or conspiring to commit the acts or omissions specified in this section.
- 4-6. "Insurance" means a contract or arrangement in which one undertakes to pay or indemnify another as to loss from certain contingencies called "risks", including through reinsurance; pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies; pay an annuity to another; or act as surety. The term does not include a debt cancellation contract between a bank and debtor, between a credit union and debtor, or between a savings association and debtor and

does not include a debt suspension contract between a bank and debtor, between a credit union and debtor, or between a savings association and debtor.

5-7. "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in subsection 4, whether the person has or is required to have a certificate of authority or denies being an insurer. The term does not include the North Dakota life and health insurance guaranty association, the risk management fund, a bank, credit union, or savings association as a party to a debt cancellation contract or debt suspension contract, or the North Dakota insurance guaranty association.

6-8. "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing.

7-9. "Policy" means an individual or group policy, group certificate, contract, or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

8-10. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of the state whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

9-11. "Reinsurance" means a contract, binder of coverage including placement slip, or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

SECTION 2. AMENDMENT. Section 26.1-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-02.1. Fraudulent insurance acts, interference, and participation, and licensure of convicted felons prohibited.

1. A person may not commit a fraudulent insurance act.
2. A person may not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.
3. a. A person convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance. The commissioner shall deny an application for license under chapter 26.1-26, or shall revoke or shall refuse to renew a license issued under chapter 26.1-26, if the commissioner finds the applicant or licensee has been convicted of a felony involving dishonesty or breach of trust.
b. A person in the business of insurance may not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

SECTION 3. AMENDMENT. Section 26.1-26-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-15. License requirement - Character.

An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. If the commissioner does not deem an applicant to be competent, trustworthy, financially responsible, of good personal reputation, or of good business reputation, the commissioner may deny the application for licensure.

SECTION 4. AMENDMENT. Section 26.1-26-39 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-39. Refusal of license - Notification of applicant - No refund of fees.

If the commissioner finds that the applicant has not met the requirements for licensing or license renewal, the commissioner shall refuse to issue or renew the license. The commissioner shall, in writing, promptly notify the applicant ~~and the appointing insurer, if applicable,~~ of the refusal, stating the grounds for the refusal. All fees accompanying the application for license are not refundable.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 213

HOUSE BILL NO. 1100

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-03.2-08 of the North Dakota Century Code, relating to confidentiality for risk-based capital reports; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03.2-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03.2-08. Confidentiality - Prohibition on announcements - Prohibition on use in ratemaking.

1. All risk-based capital reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and risk-based capital plans, including the results or report of any examination or analysis of a health organization performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to examination or analysis, with respect to a domestic health organization or foreign health organization, which are filed with the commissioner constitute information that might be damaging to the health organization if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.
2. Neither the commissioner nor any person that received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection 1.
3. To assist in the performance of the commissioner's duties, the commissioner may:
 - a. Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 1, with other state, federal, and international regulatory agencies; with the national association of insurance commissioners and its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.
 - b. Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the national association of insurance commissioners and its affiliates and

subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding documents, materials, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information; and

- c. Enter agreements governing sharing and use of information consistent with this subsection.
4. A waiver of an applicable privilege or claim of confidentiality in the documents, materials, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision c of subsection 3.
5. It is the judgment of the legislature that the comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for corrective action with respect to the health organization and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any health organization, or of any component derived in the calculation, by any health organization, insurance producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the health organization's risk-based capital levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.
- 3-6. It is the further judgment of the legislature that the risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and may not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.

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

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 214

SENATE BILL NO. 2140

(Senators O. Larsen, Kannianen)
(Representative Kasper)

AN ACT to amend and reenact subdivision c of subsection 8 of section 26.1-04-03, subsection 2 of section 26.1-04-06, and subsection 2 of section 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:

SECTION 1. AMENDMENT. Subdivision c of subsection 8 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

- c. Notwithstanding any other provision in this subsection, if the cost does not exceed an aggregate retail value of fiftyone hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subdivision, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subdivision, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subdivision, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

SECTION 2. AMENDMENT. Subsection 2 of section 26.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fiftyone hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo

merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

SECTION 3. AMENDMENT. Subsection 2 of section 26.1-25-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of ~~forty~~ **fortyone** hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 215

HOUSE BILL NO. 1147

(Representatives Monson, Pyle, D. Ruby)
(Senators Anderson, Campbell, Krebsbach)

AN ACT to amend and reenact subsection 3 of section 26.1-13-15 of the North Dakota Century Code, relating to authority of county mutual insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-13-15 of the North Dakota Century Code is amended and reenacted as follows:

3. A policy may not be issued covering property located within the platted limits of an incorporated city in this state, except the policy may provide coverage as specified under sections 26.1-13-14 and 26.1-13-16 within the platted limits of the incorporated city on:
 - a. The place of residence; or
 - b. A rental property that is no larger than a four residential rental unit;
 - c. A nonresidential property that is not used by the general public; or
 - d. A nonresidential property that is part of an existing policy.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 216

HOUSE BILL NO. 1101

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-22-14 of the North Dakota Century Code, relating to assessments and reporting of premiums and losses for the state fire and tornado fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-14. Assessments and reporting of premiums and losses.

If the reserve balance is less than twelve million dollars, the commissioner shall determine the amount of money necessary to bring the reserve balance up to twelve million dollars. The commissioner shall then levy an assessment against every policy in force with the fund. The assessment must be computed as follows:

The eighty percent or ninety percent coinsurance rate established by the insurance services office for each insured property for which that rate may be applicable, and the full rate established for policies providing coverage against indirect losses and for properties to which the eighty percent or ninety percent coinsurance rate is not applicable under the rules of the insurance services office, must be applied to the amount of insurance provided in each policy and the result of the application of the rate to the amount of insurance sets the tentative assessment to be made against the policy. The total of all tentative assessments must then be ascertained. The percentage of the assessment necessary to restore the reserve balance to the sum of twelve million dollars must then be computed and collected on each policy; provided, that until the reserve balance reaches twelve million dollars, the assessment must be in an amount determined by the commissioner but may not exceed sixty percent of the rates set by the insurance services office for insured property unless the reserve balance is depleted below three million dollars. In case of a fractional percentage the next higher whole percent must be used in such computation.

The commissioner shall submit, not later than December thirty-first of each ~~odd-numbered year~~ every five-year period, all data concerning premiums written and losses incurred during the previous ~~biennium~~ five-year period ending ~~July thirty-first~~ June thirtieth to the insurance services office so that the experience of the fund may be included in the computation of rates to apply to the classes of business written by the fund.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 217

SENATE BILL NO. 2105

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact a new section to chapter 10-04 and a new section to chapter 26.1-26 of the North Dakota Century Code, relating to exemption of agent or investment adviser representative records and insurance producer records; and to amend and reenact subsection 2 of section 26.1-02-30 of the North Dakota Century Code, relating to exemption of personal, financial, or health records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

Agent or investment adviser representative records - Exempt record.

The home address of an agent or investment adviser representative received by the commissioner is an exempt record as defined in section 44-04-17.1.

SECTION 2. AMENDMENT. Subsection 2 of section 26.1-02-30 of the North Dakota Century Code is amended and reenacted as follows:

2. As used in this section, "personal, financial, or health information" means information ~~collected from or on behalf of an individual requesting consumer assistance which that~~ would reveal:
 - a. ~~The~~An individual's personal health condition, disease, or injury;
 - b. The existence, nature, source, or amount of ~~the~~an individual's personal income;
 - c. The existence, nature, source, or amount of ~~the~~an individual's personal expenses;
 - d. Records of or relating to ~~the~~an individual's personal financial transactions of any kind;
 - e. The existence, identification, nature, or value of ~~the~~an individual's personal assets, liabilities, or net worth;
 - f. A history of ~~the~~an individual's personal medical diagnosis or treatment;
 - g. The existence, identification, nature, value, or content of ~~the~~an individual's coverage or status under any insurance policy;
 - h. ~~The~~An individual's personal contractual rights or obligations; or

- i. Any social security number, date of birth, file number, bank account number, or other number used for identification of ~~the~~an individual or any account in which ~~the~~an individual has a personal financial interest.

SECTION 3. A new section to chapter 26.1-26 of the North Dakota Century Code is created and enacted as follows:

Insurance producer records - Exempt record.

The home address of any licensed insurance producer or insurance consultant received by the commissioner is an exempt record as defined in section 44-04-17.1.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 218

HOUSE BILL NO. 1286

(Representatives Kasper, Keiser, K. Koppelman, Louser, Rohr, D. Ruby)
(Senators Casper, Dever, Klein, Kreun, Laffen, Roers)

AN ACT to amend and reenact section 26.1-29-09.1 of the North Dakota Century Code, relating to insurable interests in personal insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-29-09.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-29-09.1. Insurable interest in personal insurance.

1. An individual of competent legal capacity may procure or effect an insurance contract upon that individual's own life or body for the benefit of any person. ~~No~~A person may not procure or cause to be procured an insurance contract upon the life or body of another ~~person~~individual unless the benefits under the contract are payable to the individual insured or that individual's personal representatives, or to a person having, at the time the contract was made, an insurable interest in the individual insured.
2. If the beneficiary, assignee, or other payee under a contract made in violation of this section receives from the insurer any benefits from the contract upon the death, disablement, or injury of the individual insured, the individual insured or that individual's executor or administrator may maintain an action to recover the benefits from the person receiving ~~them~~the benefits.
3. "Insurable interest", with reference to personal insurance, includes only the following interests:
 - a. In the case of ~~individuals~~an individual related closely by blood or by law, a substantial interest engendered by love and affection.
 - b. In the case of ~~persons~~a person other than ~~those~~an individual described in subdivision a, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest that would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.
 - c. In the case of an individual ~~parties~~party to a contract or option for the purchase or sale of an interest in a business partnership or firm, of a membership interest in a limited liability company, or of shares of stock of a closed corporation or of an interest in the shares, an interest in the life of each individual party to the contract for the purpose of the contract only, in addition to an insurable interest that may otherwise exist as to the life of the individual.
 - d. In the case of a religious, educational, eleemosynary, charitable, or benevolent ~~organizations~~organization, a lawful interest in the life of the

- individual insured if that individual has executed a written consent to the insurance contract.
- e. In the case of a ~~corporation~~ an employer or the trustee of a trust providing life, health, disability, retirement, or similar benefits to employees of one or more ~~corporations~~ employers, and acting in a fiduciary capacity with respect to the employees, retired employees, or ~~the employees'~~ the employees' dependents or beneficiaries, a ~~corporation~~ an employer or the trustee of a trust has an insurable interest in the lives of employees for whom the benefits are to be provided and the ~~corporation~~ employer or trustee of a trust may purchase, accept, or otherwise acquire an interest in personal insurance as a beneficiary or owner. Written consent of the insured individual is required if the personal insurance purchased names the ~~corporation~~ employer or the trustee of a trust as a beneficiary.
- f. In the case of a service recipient or the trustee of a trust providing a nonqualified deferred compensation plan, as defined by section 409A(d) (1) of the Internal Revenue Code [26 U.S.C. 409A(d)(a)], to a service provider, an insurable interest in the life of the service provider for whom the nonqualified deferred compensation plan is provided. The service recipient or the trustee of a trust may purchase, accept, or otherwise acquire an interest in personal insurance with the trust as a beneficiary or owner. Written consent of the insured individual is required. As used in this subdivision:
- (1) "Service provider" means an individual, other than an employee, who provides significant services to a service recipient.
- (2) "Service recipient" means the entity for which services are performed by a service provider.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 219

SENATE BILL NO. 2052

(Human Services Committee)

(At the request of the Public Employees Retirement System)

AN ACT to create and enact section 26.1-36-09.15 of the North Dakota Century Code, relating to individual and group health insurance coverage of telehealth services; and to amend and reenact section 54-52.1-04.13 of the North Dakota Century Code, relating to public employees retirement system uniform group insurance coverage of telehealth services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-36-09.15 of the North Dakota Century Code is created and enacted as follows:

26.1-36-09.15. Coverage of telehealth services.

1. As used in this section:

- a. "Distant site" means a site at which a health care provider or health care facility is located while providing medical services by means of telehealth.
- b. "Health care facility" means any office or institution at which health services are provided. The term includes hospitals; clinics; ambulatory surgery centers; outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any health care provider.
- c. "Health care provider" includes an individual licensed under chapter 43-05, 43-06, 43-12.1 as a registered nurse or as an advanced practice registered nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42, 43-44, 43-45, 43-47, 43-58, or 43-60.
- d. "Originating site" means a site at which a patient is located at the time health services are provided to the patient by means of telehealth.
- e. "Policy" means an accident and health insurance policy, contract, or evidence of coverage on a group, individual, blanket, franchise, or association basis.
- f. "Store-and-forward technology" means electronic information, imaging, and communication that is transferred, recorded, or otherwise stored in order to be reviewed at a distant site at a later date by a health care provider or health care facility without the patient present in real time. The term includes telehome monitoring and interactive audio, video, and data communication.
- g. "Telehealth":

- (1) Means the use of interactive audio, video, or other telecommunications technology that is used by a health care provider or health care facility at a distant site to deliver health services at an originating site and that is delivered over a secure connection that complies with the requirements of state and federal laws.
- (2) Includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store-and-forward technology.
- (3) Does not include the use of audio-only telephone, electronic mail, or facsimile transmissions.
2. An insurer may not deliver, issue, execute, or renew a policy that provides health benefits coverage unless that policy provides coverage for health services delivered by means of telehealth which is the same as the coverage for health services delivered by in-person means.
3. Payment or reimbursement of expenses for covered health services delivered by means of telehealth under this section may be established through negotiations conducted by the insurer with the health services providers in the same manner as the insurer with the health services providers in the same manner as the insurer establishes payment or reimbursement of expenses for covered health services that are delivered by in-person means.
4. Coverage under this section may be subject to deductible, coinsurance, and copayment provisions.
5. This section does not require:
- a. A policy to provide coverage for health services that are not medically necessary, subject to the terms and conditions of the policy;
- b. A policy to provide coverage for health services delivered by means of telehealth if the policy would not provide coverage for the health services if delivered by in-person means;
- c. A policy to reimburse a health care provider or health care facility for expenses for health services delivered by means of telehealth if the policy would not reimburse that health care provider or health care facility if the health services had been delivered by in-person means; or
- d. A health care provider to be physically present with a patient at the originating site unless the health care provider who is delivering health services by means of telehealth determines the presence of a health care provider is necessary.

SECTION 2. AMENDMENT. Section 54-52.1-04.13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04.13. (~~Effective through July 31, 2017~~) Insurance coverageCoverage of telehealth services.

1. As used in this section:

- a. ~~"Distant site" means a site at which a health care provider or health care facility is located while providing medical services by means of telehealth.~~
- b. ~~"Health care facility" means any office or institution at which health services are provided. The term includes hospitals; clinics; ambulatory surgery centers; outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any health care provider.~~
- c. ~~"Health care provider" includes an individual licensed under chapter 43-05, 43-06, 43-12.1 as a registered nurse or as an advanced practice registered nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42, 43-44, 43-45, 43-47, 43-58, or 43-60.~~
- d. ~~"Originating site" means a site at which a patient is located at the time health services are provided to the patient by means of telehealth.~~
- e. ~~"Policy" means health benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self insurance plan pursuant to section 54-52.1-04.2.~~
- f. ~~"Store and forward technology" means electronic information, imaging, and communication that is transferred, recorded, or otherwise stored in order to be reviewed at a distant site at a later date by a health care provider or health care facility without the patient present in real time. The term includes telehome monitoring and interactive audio, video, and data communication.~~
- g. ~~"Telehealth":~~
- (1) ~~Means the use of interactive audio, video, or other telecommunications technology that is used by a health care provider or health care facility at a distant site to deliver health services at an originating site; and that is delivered over a secure connection that complies with the requirements of state and federal laws.~~
 - (2) ~~Includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store and forward technology.~~
 - (3) ~~Does not include the use of audio only telephone, electronic mail, or facsimile transmissions.~~
2. ~~For all policies that become effective after June 30, 2015, and which do not extend past June 30, 2017, the board shall provide health benefits coverage under a policy that provides coverage for health services delivered by means of telehealth which is the same as the coverage for health services delivered by in-person means.~~
3. ~~Payment or reimbursement of expenses for covered health services delivered by means of telehealth under this section may be established through negotiations conducted by the board or the board's contractor with the health services providers in the same manner as the board establishes payment or reimbursement of expenses for covered health services that are delivered by in-person means.~~

4. ~~Coverage under this section may be subject to deductible, coinsurance, and copayment provisions.~~
5. ~~This section does not require:~~
 - a. ~~A policy to provide coverage for health services that are not medically necessary, subject to the terms and conditions of the policy;~~
 - b. ~~A policy to provide coverage for health services delivered by means of telehealth if the policy would not provide coverage for the health services if delivered by in-person means;~~
 - c. ~~A policy to reimburse a health care provider or health care facility for expenses for health services delivered by means of telehealth if the policy would not reimburse that health care provider or health care facility if the health services had been delivered by in-person means; or~~
 - d. ~~A health care provider to be physically present with a patient at the originating site unless the health care provider who is delivering health services by means of telehealth determines the presence of a health care provider is necessary.~~

The board shall provide health benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 which provides coverage of health services delivered by means of telehealth in the same manner as provided under section 26.1-36-09.15.

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 220

SENATE BILL NO. 2267

(Senator Casper)
(Representatives Lefor, Streyle)

AN ACT to amend and reenact section 26.1-36-41 of the North Dakota Century Code, relating to the authority of the insurance commissioner to investigate health insurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-41 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-41. Contract limitations.

1. An insurance company as defined by section 26.1-02-01 issuing a health and accident policy, a health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation may not terminate a practitioner's participating contract, designate a practitioner as nonpayable, or otherwise impose sanctions on any practitioner solely for an excessive or inappropriate practice pattern unless the requirements of this section are met. If a practitioner engages in an excessive or inappropriate practice pattern for the practitioner's specialty, the entity shall inform the practitioner, in writing, as to the manner in which the practitioner's practice is excessive or inappropriate. The entity shall consult with the practitioner and provide a reasonable time period of not less than six months within which to modify the practitioner's practice pattern. If the excessive or inappropriate practice pattern continues, the entity may impose reasonable sanctions on the practitioner, terminate the practitioner's participating contract, or designate the practitioner as nonpayable. If considered for sanction, termination, or nonpayable status, the affected practitioner must first be given the opportunity to be present and to be heard by a committee appointed by the entity which must include at least one representative of the practitioner's specialty. The entity may not impose sanctions on a practitioner, terminate a practitioner, or designate a practitioner as nonpayable in the absence of the committee's recommendation to do so. All reports, practice profiles, data, and proceedings of the entity relative to a practitioner who is sanctioned, terminated, or considered for designation as nonpayable are confidential and may not be disclosed or be subject to subpoena or other legal process. Nonpayable status under this section may not commence until after appropriate notification to the entity's subscribers and the affected practitioner. As used in this section, "practitioner" includes an optometrist, a physician, a chiropractor, or an advanced registered nurse practitioner duly licensed to practice in this state.
2. If the entity uses a practice profile as a factor to evaluate a practitioner's practice pattern, the entity shall provide upon request of the practitioner at any time a description of the criteria, data sources, and methodologies used to compile the practice profile concerning the practitioner and the manner in which the practice profile is used to evaluate the practitioner. An entity may not sanction a practitioner, terminate a practitioner's participating contract, or

designate a practitioner as nonpayable on the basis of a practice profile without informing the practitioner of the specific data underlying those findings. For purposes of this section, a "practice profile" means a profile, summary, economic analysis, or other analysis of data concerning the cost, quality, or quantity of services rendered by an individual practitioner, group of practitioners, or preferred provider. In addition, an entity in developing practice profiles or otherwise measuring practitioner performance shall:

- a. Make severity adjustments, including allowances for the severity of illness or condition of the patient mix and allowances for patients with multiple illnesses or conditions;
- b. Periodically evaluate, with input from specialty-specific practitioners as appropriate, the quality and accuracy of practice profiles, data sources, and methodologies;
- c. Develop and implement safeguards to protect against the unauthorized use or disclosure of practice profiles; and
- d. Provide the opportunity for any practitioner at any time to examine the accuracy, completeness, or validity of any practice profile concerning the practitioner and to prepare a written response to the profile. The entity shall negotiate in good faith with the practitioner to correct any inaccuracies or to make the profile complete. If the inaccuracies or deficiencies are not corrected to the satisfaction of the practitioner, the entity shall submit the written response prepared by the practitioner along with the profile at the time the profile is used pursuant to subsection 1 or provided to any third party consistent with section 26.1-36-12.4.

3. This section does not limit the authority of the commissioner to obtain from an insurer information relating to an investigation of suspected or actual fraudulent insurance acts.

Approved March 15, 2017

Filed March 16, 2017

CHAPTER 221

HOUSE BILL NO. 1302

(Representatives Schobinger, Delzer, Dobervich, Kasper)
(Senators Klein, Krebsbach)

AN ACT to amend and reenact subsection 1 of section 26.1-39-05 of the North Dakota Century Code, relating to property and casualty insurance covered loss.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 26.1-39-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever any insurance policy is written or renewed to insure any real property in this state, including structures owned by persons other than the insured, against loss caused by or resulting from any covered cause of loss and the insured property is wholly or completely destroyed by any covered cause of loss without fraud on the part of the insured or the insured's assigns, the amount of the insurance written in the policy is the true value of the property insured and the true amount of loss and measure of damages, subject to the following conditions:
 - a. If the covered loss occurred within ~~ninety~~sixty days after the policy effective date or within ~~ninety~~sixty days after the policy limits were increased by twenty-five percent or more at the insured's request, the loss payable to the insured for covered loss incurred during the first ~~ninety~~sixty days is the lesser of:
 - (1) The full value of the policy; or
 - (2) ~~The actual cash value or replacement cost of the property, depending on the policy provisions applicable to the structure~~The amount paid in accordance with the policy provisions as if a partial loss occurred.
 - b. Subdivision a does not apply to:
 - (1) Renewal policies with policy limits increases of less than twenty-five percent;
 - (2) Policies for which limits have increased twenty-five percent or more due to the construction of additions; or
 - (3) Policies for which the increased limits were approved by the insurer before the loss.
 - c. Builder risk policies of insurance covering property in the process of being constructed must be valued and settled according to the actual value of that portion of construction completed at the time of any covered cause of loss.

- d. In case of double insurance, each insurer shall contribute proportionally toward the loss without regard to the dates of the insurance policies.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 222

HOUSE BILL NO. 1247

(Representatives Keiser, Kasper)

AN ACT to amend and reenact subsection 4 of section 26.1-39-11, section 26.1-39-20, subsection 5 of section 26.1-40-01, and section 26.1-40-09 of the North Dakota Century Code, relating to termination of insurance and duplicate property insurance coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-39-11 of the North Dakota Century Code is amended and reenacted as follows:

4. "Termination" means ~~either a cancellation or nonrenewal~~ of property insurance coverage in whole or in part. ~~A cancellation~~ Cancellation occurs during the policy term. ~~A nonrenewal~~ Nonrenewal occurs at the end of the policy term as set forth in subsection 3. For purposes of sections 26.1-39-10 through 26.1-39-21, the transfer of a policy between companies within the same insurance holding company system is not a termination. Requiring a reasonable deductible, reasonable changes in the amount of insurance, or reasonable reductions in policy limits or coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date for the policy.

SECTION 2. AMENDMENT. Section 26.1-39-20 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-20. Duplicate coverage - Termination of coverage when another policy in force - Notice.

Notwithstanding the failure of an insurer to comply with sections 26.1-39-13 through 26.1-39-16, if an insured obtains a replacement policy that provides providing equal or more extensive coverage for ~~any~~ a property covered in both policies, the first insurer's coverage of ~~that~~ that property may be terminated either by cancellation or nonrenewal. The termination is effective on the effective date of the second policy providing duplicate replacement coverage. Upon termination, the insured is entitled to a refund of the premium and written notice must be mailed or delivered to the named insured.

SECTION 3. AMENDMENT. Subsection 5 of section 26.1-40-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Termination" means ~~either a cancellation or nonrenewal~~ of automobile insurance coverage in whole or in part. ~~A cancellation~~ Cancellation occurs during the policy term. ~~A nonrenewal~~ Nonrenewal occurs at the end of the policy term. An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage is not a termination. The transfer of a policy between companies within the same insurance holding company system is not a termination.

SECTION 4. AMENDMENT. Section 26.1-40-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-09. Duplicate coverage - Termination of coverage when another policy in force - Notice.

Notwithstanding the failure of an insurer to comply with sections 26.1-40-01 through 26.1-40-12, termination of any coverage under the policy either by cancellation or nonrenewal is effective on the effective date of any other policy providing similar coverage on the same motor vehicle or any replacement of the motor vehicle if an insured obtains a replacement policy providing equal or more extensive coverage for a motor vehicle covered in both policies, the first insurer's coverage of that motor vehicle may be terminated either by cancellation or nonrenewal. The termination is effective on the effective date of the second policy providing duplicate replacement coverage. Upon termination, the insured is entitled to a refund of the premium and written notice must be mailed or delivered to the named insured.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 223

HOUSE BILL NO. 1198

(Representatives Nathe, Bosch)
(Senator D. Larson)

AN ACT to amend and reenact section 26.1-39-23 of the North Dakota Century Code, relating to property and casualty insurance binders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-39-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-23. Temporary insurance - Use of binders.

A binder or contract for temporary ~~farm and personal property~~ lines of insurance may be made orally or in writing and is deemed to include all the terms of a standard fire insurance policy and all applicable endorsements as may be designated in the binder. However, the cancellation clause of the standard fire insurance policy and the clause specifying the hour of the day at which the insurance commences may be superseded by the express terms of the binder. A duly authorized binder must be accepted as evidence of insurance coverage required as a condition of financing the purchase of property, except that a mortgagee or lender is not required to accept a renewal or extension of the binder. Any insurance producer who has express authority to bind ~~farm and personal property~~ and casualty lines of insurance coverage, and who orally agrees on behalf of an insurer to provide insurance coverage, if requested, shall execute and deliver a written memorandum or binder containing the terms of the oral agreement to the insured within three business days from the time of the oral agreement.

Approved April 10, 2017

Filed April 10, 2017

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 224

SENATE BILL NO. 2114

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 15 of section 27-20-02, subsection 2 of section 27-20-32.2, subsection 9 of section 50-11-00.1, and section 50-11-03.3 of the North Dakota Century Code, relating to the definition of permanency hearing, reasonable efforts for sibling placement, definition of group home, and liability coverage to foster homes for children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

15. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
 - a. Whether and, if applicable, when the child will be returned to the parent;
 - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
 - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
 - d. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings;
 - e. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings;
 - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child, aged sixteen or older, will be placed in another planned permanent living arrangement. The court shall:

- (1) Ask the child whether the child has a desired permanency outcome of another planned permanent living arrangement,
 - (2) Make a judicial determination explaining why another planned permanent living arrangement is the best permanency plan for the child, and
 - (3) Identify the compelling reasons it continues not to be in the best interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative;
- g. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether out-of-state placements have been considered. If the child is currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and
- h. In the case of a child who has attained age ~~sixteen~~fourteen, the services needed to assist the child to make the transition ~~from foster care to independent living~~to successful adulthood.

SECTION 2. AMENDMENT. Subsection 2 of section 27-20-32.2 of the North Dakota Century Code is amended and reenacted as follows:

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~~Whether and, if applicable, 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.

SECTION 3. AMENDMENT. Subsection 9 of section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

9. "Group home" means a licensed or approved residence in which foster care is regularly provided ~~for more than~~to at least four, but fewer than thirteen, unrelated children.

SECTION 4. AMENDMENT. Section 50-11-03.3 of the North Dakota Century Code is amended and reenacted as follows:

50-11-03.3. Department to provide liability coverage to foster homes for children.

1. The department shall provide liability coverage for acts or omissions of foster children placed in the care of foster families. The department may provide this liability coverage through self-insurance.
2. The liability coverage under this section:
 - a. Must provide coverage for damage to property which is caused by the act of a foster child. This coverage must be for the lesser of the reasonable cost to repair or to replace the damaged property.
 - b. Is secondary to any other coverage.
 - c. ~~May~~Except as provided in subdivision d, may not exceed five thousand dollars per claim, with an annual maximum of ten thousand dollars per year per claimant. The coverage under this subsection must include a deductible not to exceed one hundred dollars per claim.
 - d. In cases in which the property damage per event total exceeds twenty-five thousand dollars, the department may further review the claim. The department may cover twenty-five percent of the remaining property damage after any insurance reimbursement, not to exceed ten thousand dollars.
3. The department may provide for exclusions from liability coverage provided under this section.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 225

SENATE BILL NO. 2098

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

AN ACT to create and enact a new subsection to section 27-20-51 of the North Dakota Century Code, relating to the disclosure of juvenile court records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁷ **SECTION 1.** A new subsection to section 27-20-51 of the North Dakota Century Code is created and enacted as follows:

To the extent necessary to provide victim services or benefits under chapter 12.1-41, the judge and staff of the juvenile court may disclose information to refer a juvenile, who may be a victim of human trafficking, to a program for runaway and homeless youth located in the state and approved by the juvenile court of jurisdiction. Information disclosed under this subsection must remain confidential.

Approved March 29, 2017

Filed March 30, 2017

¹⁰⁷ Section 27-20-51 was also amended by section 2 of Senate Bill No. 2189, chapter 344.

JUDICIAL PROCEDURE, CIVIL

CHAPTER 226

SENATE BILL NO. 2169

(Senators Hogue, D. Larson)
(Representatives Brabandt, Klemin)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 28-20.3 of the North Dakota Century Code, relating to recognition of foreign-country money judgments; and to repeal chapter 28-20.2 of the North Dakota Century Code, relating to foreign money judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 28-20.3 of the North Dakota Century Code is created and enacted as follows:

28-20.3-01. Definitions.

As used in this chapter:

1. "Foreign country" means a government other than:
 - a. The United States;
 - b. A state, district, commonwealth, territory, or insular possession of the United States; or
 - c. Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under section 1 of article IV of the Constitution of the United States.
2. "Foreign-country judgment" means a judgment of a court of a foreign country.

28-20.3-02. Applicability.

1. Except as otherwise provided in subsection 2, this chapter applies to a foreign-country judgment to the extent the judgment:
 - a. Grants or denies recovery of a sum of money; and
 - b. Under the law of the foreign country where rendered, is final, conclusive and enforceable.
2. This chapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent the judgment is:

- a. A judgment for taxes;
 - b. A fine or other penalty; or
 - c. A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.
3. A party seeking recognition of a foreign-country judgment has the burden of establishing that this chapter applies to the foreign-country judgment.

28-20.3-03. Standards for recognition of foreign-country judgment.

1. Except as otherwise provided in subsections 2 and 3, a court of this state shall recognize a foreign-country judgment to which this chapter applies.
2. A court of this state may not recognize a foreign-country judgment if:
 - a. The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
 - b. The foreign court did not have personal jurisdiction over the defendant; or
 - c. The foreign court did not have jurisdiction over the subject matter.
3. A court of this state need not recognize a foreign-country judgment if:
 - a. The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
 - b. The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
 - c. The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;
 - d. The judgment conflicts with another final and conclusive judgment;
 - e. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
 - f. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
 - g. The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
 - h. The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.
4. A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection 2 or 3 exists.

28-20.3-04. Personal jurisdiction.

1. A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:
 - a. The defendant was served with process personally in the foreign country;
 - b. The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;
 - c. The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
 - d. The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;
 - e. The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country;
or
 - f. The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.
2. The list of bases for personal jurisdiction in subsection 1 is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection 1 as sufficient to support a foreign-country judgment.

28-20.3-05. Procedure for recognition of foreign-country judgment.

1. If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition of the foreign-country judgment.
2. If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

28-20.3-06. Effect of recognition of foreign-country judgment.

If the court in a proceeding under section 28-20.3-05 finds the foreign-country judgment is entitled to recognition under this chapter then, to the extent the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

1. Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and
2. Enforceable in the same manner and to the same extent as a judgment rendered in this state.

28-20.3-07. Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

28-20.3-08. Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date the foreign-country judgment became effective in the foreign country.

28-20.3-09. Uniformity of interpretation.

In applying and construing this uniform chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 2. REPEAL. Chapter 28-20.2 of the North Dakota Century Code is repealed.

Approved March 30, 2017

Filed March 30, 2017

CHAPTER 227

HOUSE BILL NO. 1300

(Representatives Kempenich, K. Koppelman, Olson)
(Senators Klein, D. Larson, Unruh)

AN ACT to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to agencies exempt from the definition of administrative agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the department of emergency services.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology council.
 - i. The board of equalization.
 - j. The board of higher education.
 - k. The Indian affairs commission.

- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- ~~s. The board of university and school lands except with respect to activities under chapter 47-30.1.~~
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- ~~u.t.~~ The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- ~~v.u.~~ The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- ~~w.v.~~ The commission on legal counsel for indigents.
- ~~x.w.~~ The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
- ~~y.x.~~ The industrial commission with respect to approving or setting water rates under chapter 61-40.

Approved April 20, 2017

Filed April 21, 2017

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 228

HOUSE BILL NO. 1236

(Representatives Brandenburg, Hanson, Hogan)
(Senators Heckaman, Robinson)

AN ACT to amend and reenact section 29-04-03.1 of the North Dakota Century Code, relating to prosecution for sexual abuse of minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

29-04-03.1. Prosecution for sexual abuse of minors.

1. Except as provided in subsection 2, a prosecution for a violation of sections 12.1-20-03 through 12.1-20-08 or of section 12.1-20-11 if the victim was under eighteen years of age at the time the offense was committed must be commenced in the proper court within ten years after the commission of the offense or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities.
2. If, based upon evidence containing deoxyribonucleic acid or a fingerprint obtained at the time of offense, a suspect is conclusively identified by deoxyribonucleic acid testing after the time period prescribed in subsection 1 has expired, a prosecution may be commenced within three years after the suspect is conclusively identified by the deoxyribonucleic acid testing or fingerprint authentication.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 229

HOUSE BILL NO. 1221

(Representatives Rick C. Becker, Johnston, Kiefert, Louser, Schreiber-Beck)
(Senators Luick, Robinson)

AN ACT to create and enact chapter 29-29.5 of the North Dakota Century Code, relating to the use of confidential informants; to amend and reenact section 12-63-04 of the North Dakota Century Code, relating to the powers and duties of the peace officer standards and training board; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

12-63-04. Board - Powers - Duties - Authority.

The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
 - b. Examine, under oath, any applicant for licensing.
 - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
 - d. Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.

3. The board shall adopt rules relating to the professional conduct of licensed peace officers involved in confidential informant agreements under chapter 29-29.5, and shall receive complaints and make determinations if an officer's conduct violated the protections provided in chapter 29-29.5. Annually, the board shall conduct an audit evaluating the effectiveness of confidential informant training requirements.
4. The board shall establish penalties and enforce violations of protections provided in chapter 29-29.5. The penalties established must be formulated based on the nature, severity, gravity, and recurrence of violations. The board may deny, suspend, or revoke a license or may impose probationary conditions, including remedial training.

SECTION 2. Chapter 29-29.5 of the North Dakota Century Code is created and enacted as follows:

29-29.5-01. Definitions.

1. "Benefit" means any of the following conferred on a confidential informant or a third party:
 - a. Leniency in a criminal case or probation or parole matter, including a decision whether to arrest or charge an offense or to limit the number or severity of charges;
 - b. Sentence reduction of any kind or amount; or
 - c. A favorable sentencing or bond recommendation.
2. "Confidential informant" means an individual who cooperates with a law enforcement agency and:
 - a. Is willing to attempt a controlled buy or controlled sale or agrees to surreptitiously record a target offender; and
 - b. Seeks or is offered a benefit.
3. "Controlled buy" means the purchase or attempted purchase of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of law enforcement.
4. "Controlled sale" means the sale or attempted sale of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of enforcement.
5. "Informant agreement" means a written agreement describing the rights and obligations of a confidential informant and law enforcement agency.
6. "Law enforcement agency" means an agency authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.
7. "Target offender" means an individual suspected of a violation of the law, whose identity is known or unknown, and who is the focus of an informant agreement.

29-29.5-02. Limitation on use of juvenile confidential informants.

1. A law enforcement agency may not use a juvenile fifteen years of age or younger as a confidential informant.
2. A juvenile over the age of fifteen, but under the age of eighteen, may not be used as a confidential informant unless:
 - a. The juvenile is married;
 - b. The juvenile is emancipated;
 - c. The juvenile is serving in the active duty armed forces; or
 - d. The juvenile is subject to criminal charges; and
 - (1) There are no other reasonable avenues to obtain evidence of the crime being investigated and the risk of harm to the juvenile is minimal;
 - (2) The juvenile's custodial parent or guardian has signed the informant agreement; and
 - (3) The juvenile has consulted with legal counsel.

29-29.5-03. Limitation on use of campus police.

A law enforcement officer employed under section 15-10-17 may not enter an informant agreement with a student enrolled in an institution under the control of the state board of higher education.

29-29.5-04. Law enforcement confidential informant training and guidelines.

1. After July 1, 2018, a law enforcement agency may not use a confidential informant unless the law enforcement agency is trained in the use of confidential informants in a training course approved by the attorney general.
 - a. Training must occur at least once every three years, and must establish that the law enforcement agency has trained all personnel who are involved in the use or recruitment of confidential informants in the law enforcement agency's policies and procedures in a manner consistent with the peace officer standards and training requirements.
 - b. The law enforcement agency shall document the date and scope of all training along with all law enforcement personnel trained.
2. The peace officers standards and training board shall adopt rules for the use of confidential informants which at a minimum:
 - a. Assign the consideration of the preservation of the safety of a confidential informant.
 - b. Execute reasonable protective measures for a confidential informant.
 - c. Establish guidelines for the training and briefing of confidential informants.

- d. Restrict off-duty association or social relationships by law enforcement agency personnel with confidential informants.
- e. Establish procedures to deactivate confidential informants which maintain the safety and anonymity of confidential informants.
- f. Establish a process to evaluate and report the criminal history and propensity for violence of any target offenders.
- g. Establish written security procedures protecting the identity of a confidential informant.
- h. Establish written procedures relating to the use of a paid confidential informant.

29-29.5-05. Written agreement required.

Except for court proceedings, a law enforcement agency may use a confidential informant only with a written agreement executed by the confidential informant and the law enforcement agency. An agreement for use of a confidential informant must be in writing, and include:

1. The confidential informant's right to remain silent, the right to speak with legal counsel at any time, and the right to cease working as a confidential informant;
2. A statement of the benefit, which will be recommended upon substantial compliance with the informant agreement;
3. A statement that an absolute guarantee or promise may not be made to the confidential informant other than law enforcement will truthfully report cooperation;
4. A statement of the inherent risk associated with acting as a confidential informant;
5. Confidential informant responsibilities, including testifying truthfully if called as a witness in a court proceeding;
6. A written waiver of right to counsel which must be executed separately and attached to the informant agreement, signed by the confidential informant and a law enforcement officer, and include language stating that consulting legal counsel at any time will not invalidate the agreement;
7. The parameters of the agreement, detailing the anticipated number of buys, sales, acts, or the duration of service;
8. A description of any penalty for violating the terms of the written agreement, including any additional criminal charges;
9. A warning that sexual relations with an intended target of a police investigation is a violation of the agreement and may be a violation of the law;
10. A statement that money or property loaned or entrusted to the confidential informant by law enforcement may not be used for personal use and must be accounted for at all times; and

11. Specification of any known crimes of violence committed by a target offender.

29-29.5-06. Death of a confidential informant.

Upon the death of a confidential informant, the supervising law enforcement agency shall withdraw from the investigation of the death of its confidential informant. The supervising law enforcement agency promptly shall notify the attorney general of its withdrawal from the investigation, and the attorney general shall authorize an independent law enforcement agency investigation.

29-29.5-07. Reporting violations of this chapter.

1. An individual may report a suspected violation of this chapter to the appropriate law enforcement agency administration. The law enforcement agency shall investigate any reported violation within twenty days from receiving the complaint and, within forty-five days from receiving the complaint, make a written determination on whether a violation occurred. Upon completion, the law enforcement agency shall forward the written report to the individual who filed the initial complaint and to the peace officer standards and training board for review. An individual who filed a report for a suspected violation may seek additional remedies from the peace officer standards and training board.
2. A licensed peace officer or a prosecutor who reasonably believes a law enforcement officer or a law enforcement agency has violated this chapter shall file a written report with the peace officer standards and training board.

29-29.5-08. Disposition of cases involving confidential informants.

1. An informant agreement may be presented to the court at the time of sentencing. A court shall give consideration at sentencing to a confidential informant who has substantially complied with an informant agreement.
2. After consideration of an informant agreement, notwithstanding section 19-03.1-23.2, a court may defer imposition of sentence or suspend a portion of a minimum mandatory sentence when a confidential informant has substantially complied with an informant agreement.
3. If necessary to protect a confidential informant or the integrity of an ongoing investigation, a court may direct submission of sentencing memoranda in writing under seal when sentencing or deferring imposition of sentence of a confidential informant.
4. If necessary to protect a confidential informant or the integrity of an investigation, a court may dispense with reporting departure from a mandatory sentence under subsection 3 of section 12.1-32-03.
5. This section does not prohibit disposition of cases by deferral of prosecution with or without court approval.

Approved April 24, 2017

Filed April 25, 2017

UNIFORM PROBATE CODE

CHAPTER 230

HOUSE BILL NO. 1095

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

AN ACT to amend and reenact sections 30.1-01-06 and 30.1-28-03, subsection 3 of section 30.1-28-04, subdivision d of subsection 1 of section 30.1-28-09, section 30.1-29-01, subsection 2 of section 30.1-29-04, subsection 1 of section 30.1-29-05, sections 30.1-29-07 and 30.1-29-08, subsection 2 of section 30.1-29-14, and section 30.1-29-19 of the North Dakota Century Code, relating to guardianship and conservatorship proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

30.1-01-06. (1-201) General definitions.

Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
2. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
3. "Augmented estate" means the estate described in section 30.1-05-02.
4. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an account with payable on death designation, of a security

- registered in beneficiary form transferable on death, or other nonprobate transfer at death.
6. "Child" includes an individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
 7. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
 8. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as defined in this section.
 9. "Court" means the court having jurisdiction in matters relating to the affairs of decedents.
 10. "Descendant" of an individual means all descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.
 11. "Devise", when used as a noun, means a testamentary disposition of real or personal property, and when used as a verb, means to dispose of real or personal property by will.
 12. "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
 13. "Disability" means cause for a protective order as described in section 30.1-29-01.
 14. "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.
 15. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.
 16. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.
 17. "Expert examiner" means:

- a. A licensed physician;
 - b. A psychiatrist;
 - c. A licensed psychologist trained in a clinical program;
 - d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
 - e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.
18. "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 18-19. "Foreign personal representative" means a personal representative appointed by another jurisdiction.
- 19-20. "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.
- 20-21. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with payable on death designation, security registered in beneficiary form transferable on death, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.
- 21-22. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as defined in this section, but excludes one who is merely a guardian ad litem.
- 22-23. "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.
- 23-24. "Incapacitated person" means an individual described in section 30.1-26-01.
- 24-25. "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.
- 25-26. "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

- 26-27. "Issue" of a person means descendant as defined in subsection 10.
- 27-28. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
- 28-29. "Lease" includes an oil, gas, or other mineral lease.
- 29-30. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
- 30-31. "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity and includes limited conservators as described by section 30.1-29-20.
- 31-32. "Limited guardian" means a person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of a person with limited capacity and includes limited guardians as described by section 30.1-28-04.
- 32-33. "Minor" means a person who is under eighteen years of age.
- 33-34. "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.
- 34-35. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.
- 35-36. "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.
- 36-37. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
- 37-38. "Payer" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.
- 38-39. "Person" means an individual, a corporation, a limited liability company, an organization, or other legal entity.
- 39-40. "Person with limited capacity" is as defined in section 30.1-26-01.
- 40-41. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.
- 41-42. "Petition" means a written request to the court for an order after notice.

- 42-43.** "Proceeding" includes action at law and suit in equity.
- 43-44.** "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- 44-45.** "Protected person" is as defined in section 30.1-26-01.
- 45-46.** "Protective proceeding" means a proceeding described in section 30.1-26-01.
- 46-47.** "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 47-48.** "Security" includes any note, stock, treasury stock, bond, debenture, membership interest in a limited liability company, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.
- 48-49.** "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
- 49-50.** "Sign" means, with present intent to authenticate or adopt a record other than a will, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic symbol, sound, or process.
- 50-51.** "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.
- 51-52.** "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
- 52-53.** "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- 53-54.** "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.
- 54-55.** "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- 55-56.** "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor predeceased an event under sections 30.1-04-04 and 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".
- 56-57.** "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

- 57-58. "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24, chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.
- 58-59. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- 59-60. "Visitor" means an individual, in guardianship proceedings, who is in nursing or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.
61. "Ward" means an individual described in section 30.1-26-01.
- 60-62. "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

SECTION 2. AMENDMENT. Section 30.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.

1. Any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian. No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual treatment plan team for the alleged incapacitated person or by any state employee in the performance of official duties.
2. The petition for appointment of a guardian must state:
 - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
 - b. The name, age, and address of the proposed ward;
 - c. The name and address of any person or institution having care or custody over the proposed ward;
 - d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;

- e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
 - f. The extent of guardianship authority sought, including full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking unless the petitioner is undecided on the extent of authority in any area, in which case the petition must state the specific areas in which the authority is sought;
 - g. The occupation and qualifications of the proposed guardian;
 - h. The name and address of the attorney, if known, who most recently represented the proposed ward;
 - i. A statement alleging specific facts establishing the necessity for the appointment of a guardian;
 - j. The name and address of any current conservator appointed for the proposed ward;
 - k. The name and address of any person designated as an attorney in fact or agent in a power of attorney or as an agent in a health care directive;
 - l. The name and address of any representative payee for the proposed ward;
 - m. That less intrusive alternatives to guardianship have been considered; and
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; from a ~~physician, mental health services provider, or other health care provider~~ an expert examiner, if available; and
 - o. Whether the petition seeks to restrict any of the following rights:
 - (1) To vote;
 - (2) To seek to change marital status; or
 - (3) To obtain or retain a motor vehicle operator's license.
3. Upon the filing of a petition, the court promptly shall set a date for hearing on the issues of incapacity, appoint an attorney to act as guardian ad litem, appoint a ~~physician or clinical psychologist~~ expert examiner to examine the proposed ward, and appoint a visitor to interview the proposed guardian and the proposed ward. The proposed guardian shall attend the hearing on the petition unless excused by the court for good cause.
 4. The duties of the guardian ad litem include:
 - a. Personally interviewing the proposed ward;
 - b. Explaining the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequences

- of the proceeding, the right to which the proposed ward is entitled, and the legal options that are available, including the right to retain an attorney to represent the proposed ward;
- c. Advocating for the best interests of the proposed ward. The appointed attorney serving as legal guardian ad litem may not represent the proposed ward or ward in a legal capacity; and
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; and
 - e. Reviewing the visitor's written report submitted in accordance with subdivision h and i of subsection 6 and discussing the report with the proposed ward.
5. The ~~physician or clinical psychologist~~expert examiner shall examine the proposed ward and submit a written report to the court. The written report must contain:
- a. A description of the nature and degree of any current incapacity or disability, including the medical or psychological history, if reasonably available;
 - b. A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current incapacity or disability;
 - c. A statement as to how or in what manner any underlying condition of physical or mental health affects the proposed ward's ability to provide for personal needs; and
 - d. A statement as to whether any current medication affects the demeanor of the proposed ward or the ability of the proposed ward to participate fully in any court proceeding or in any other procedure required by the court or by court rule.
6. The visitor shall have the following duties:
- a. To meet, interview, and consult with the proposed ward regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed ward can reasonably be expected to understand.
 - b. To ascertain the proposed ward's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof.
 - c. To interview the person seeking appointment as guardian.
 - d. To interview other persons interested in the welfare of the proposed ward.
 - e. To visit the proposed ward's present place of residence.
 - e.f. To discuss an alternative resource plan with the proposed ward, if appropriate.

- f.g. To obtain other relevant information as directed by the court.
- g-h. To submit a written report to the court.
- h-i. The visitor's written report must contain:
- (1) A description of the nature and degree of any current impairment of the proposed ward's understanding or capacity to make or communicate decisions;
 - (2) A statement of the qualifications and appropriateness of the proposed guardian and a recommendation regarding whether the proposed guardian should be appointed;
 - (3) If the visitor recommends the proposed guardian should not be appointed, a recommendation regarding an alternative individual or entity that should be appointed as guardian;
 - (4) Recommendations, if any, on the powers to be granted to the proposed guardian, including an evaluation of the proposed ward's capacity to perform the functions enumerated under subsections 3 and 4 of section 30.1-28-04; and
- ~~(4)~~(5)An assessment of the capacity of the proposed ward to perform the activities of daily living.
7. In determining whether appointment of a guardian is appropriate, the court shall consider the reports ordered by the court under this section from a guardian ad litem, visitor, and ~~either a physician or a clinical psychologist an~~ expert examiner. The court, guardian ad litem, petitioner, or proposed ward may subpoena the individual who prepared and submitted the report to appear, testify, and be cross-examined.
 8. The proposed ward must be present at the hearing in person, unless good cause is shown for the absence. Good cause does not consist only of the physical difficulty of the proposed ward to attend the hearing. The proposed ward has the right to present evidence, and to cross-examine witnesses, including the court-appointed ~~physician~~expert examiner and the visitor. The issue may be determined at a closed hearing if the proposed ward or the proposed ward's counsel so requests.
 9. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. Accordingly, the court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the proposed ward.
 10. If the court approves a visitor, lawyer, ~~physician~~expert examiner, guardian, or emergency guardian appointed in a guardianship proceeding, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being.

²²²**SECTION 3. AMENDMENT.** Subsection 3 of section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

222Section 30.1-28-04 was also amended by section 2 of House Bill No.1365, chapter 231.

3. Except upon specific findings of the court, ~~ne~~ ward may not be deprived of any of the following legal rights: to vote, to seek to change marital status, or to obtain or retain a motor vehicle operator's license, ~~or to testify in any judicial or administrative proceedings.~~

SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each.

SECTION 5. AMENDMENT. Section 30.1-29-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-01. (5-401) Protective proceedings - Burden of proof.

Upon petition and after notice and hearing in accordance with the provisions of this chapter, the court may appoint a conservator or make other protective order for cause as follows:

1. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines by a preponderance of the evidence that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by the minor's minority, or that funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide funds.
2. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person, including a minor, if the court determines ~~that~~by clear and convincing evidence:
 - a. The person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, ~~confinement, detention by a foreign power, or disappearance;~~
 - b. The person is unable to manage the person's property and affairs effectively for reasons of confinement, detention by a foreign power, or disappearance; or
 - c. The person has property ~~which~~that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

SECTION 6. AMENDMENT. Subsection 2 of section 30.1-29-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The petition ~~shall set forth~~must state or include, to the extent known, ~~the~~:
 - a. The interest of the petitioner; ~~the~~

- b. The name, age, residence, and address of the person to be protected; the
- c. The name and address of the guardian of the person to be protected, if any; the
- d. The name and address of the nearest relative of the person to be protected known to the petitioner; a
- e. A general statement of property of the person to be protected with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which the person to be protected is entitled; and the
- f. The extent of conservatorship authority sought;
- g. The name and address of any person designated as an attorney in fact or agent in a power of attorney;
- h. The name and address of any representative payee for the person to be protected;
- i. That less intrusive alternatives to conservatorship have been considered;
- j. If the appointment of a conservator is requested under subdivision a of subsection 2 of section 30.1-29-01, an attached recent statement, if any, from an expert examiner which describes the physical, mental, and emotional limitations of the person to be protected;
- k. The reason why appointment of a conservator or other protective order is necessary; and
- l. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of the person's priority for appointment.

SECTION 7. AMENDMENT. Subsection 1 of section 30.1-29-05 of the North Dakota Century Code is amended and reenacted as follows:

1. On a petition for appointment of a conservator or other protective order, the person to be protected and the spouse of the person to be protected or, if none, the parents of the person to be protected, must be served personally by the petitioning party with notice of the proceeding at least fourteen days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they, any other guardian or conservator, and any government agency paying benefits to the person sought to be protected, if the person seeking the appointment has knowledge of the existence of these benefits, must be given notice in accordance with section 30.1-03-01. Waiver by the person to be protected is not effective unless the proceedings are limited to payment of veterans' administration benefits, the person to be protected attends the hearing, or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

SECTION 8. AMENDMENT. Section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-07. (5-407) Procedure concerning hearing and order on original petition.

1. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent serve as guardian ad litem for the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers andThe duties of a guardian ad litem include:
 - a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;
 - b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;
 - c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
 - d. Interviewing the person seeking appointment as conservator;
 - e. Obtaining any other relevant information;
 - f. Submitting a written report to the court containing the guardian ad litem's response to the petition; and
 - g. Attending the hearing unless excused by the court for good cause.
2. Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the person to be protected are or may be inadequately represented, ~~it may~~the court shall appoint an attorney to represent serve as guardian ad litem for the person to be protected. An attorney appointed by the court to represent a protected person has the powers andThe duties of a guardian ad litem include:
 - a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;

- b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;
 - c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
 - d. Interviewing the person seeking appointment as conservator;
 - e. Obtaining any other relevant information;
 - f. Submitting a written report to the court containing the guardian ad litem's response to the petition; and
 - g. Attending the hearing unless excused by the court for good cause.
3. If the petition seeks appointment of a conservator or other protective order for reasons other than minority and the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may shall direct that the person to be protected be examined by a physician an expert examiner designated by the court. The expert examiner preferably a physicianshould be someone who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer, employee, or special appointee of the court.
- a. An expert examiner appointed under this subsection shall examine the person to be protected and submit a written report to the court. The report must contain:
 - (1) A description of the nature and degree of any current disability, including the medical or psychological history, if reasonably available;
 - (2) A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current disability;
 - (3) A statement about how or in what manner any underlying condition of physical or mental health affects the ability of the person to be protected to provide for personal needs; and
 - (4) A statement about whether any current medication affects the demeanor of the person to be protected or the ability of the person to participate fully in any court proceeding or in any other procedure required by the court or by court rule.
 - b. In determining whether appointment of a conservator is appropriate, the court shall consider the reports ordered by the court under this subsection from a guardian ad litem and an expert examiner. The court, guardian ad litem, petitioner, or person to be protected may subpoena the expert examiner who prepared and submitted the report to appear, testify, and be cross-examined.

4. The person to be protected must be present at the hearing in person, unless good cause is shown for the absence. Good cause does not consist of the physical difficulty of the person to be protected to attend the hearing. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. The court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the person to be protected.
5. In any case in which the veterans' administration is or may be an interested party, a certificate of an authorized official of the veterans' administration that the person to be protected has been found incapable of handling the benefits payable on examination in accordance with the laws and regulations governing the veterans' administration ~~shall be~~ prima facie evidence of the necessity for such ~~appointment~~ a conservator or other protective order.
- ~~3-6.~~ After hearing, upon finding that a ~~basis for the appointment of a conservator or other protective order has been established~~ is appropriate, the court shall make an appointment or other appropriate protective order.

SECTION 9. AMENDMENT. Section 30.1-29-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-08. (5-408) Permissible court orders.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.
2. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:
 - a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the benefit of the person to be protected or the benefit of the dependents of the person to be protected.
 - b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
 - c. After hearing and upon determining that ~~a basis for an appointment of a conservator~~ is appropriate with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will. These powers include power to make gifts, to convey or release the person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, to exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to

create revocable or irrevocable trusts of property of the estate which may extend beyond the person's disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise the person's right to an elective share in the estate of the person's deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.

- d. The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that the protected person either is incapable of consenting or has consented to the proposed exercise of power.
 - e. An order made pursuant to this section determining that a ~~basis for~~ appointment of a conservator or other protective order ~~exists~~ is appropriate has no effect on the capacity of the protected person.
3. Unless terminated earlier by the court, an order appointing or reappointing a conservator under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the conservator, the protected person, the protected person's attorney, if any, and any interested persons regarding whether the need for a conservator continues to exist. If it is recommended the conservatorship continue, the court may appoint a guardian ad litem in accordance with section 30.1-29-07. The court shall hold a hearing on whether the conservatorship should continue. Following the hearing and consideration of submitted information, the court may reappoint the conservator for up to another five years, allow the existing order to expire, or appoint a new conservator in accordance with this section. The supreme court, by rule or order, shall provide for regular review of conservatorships in existence on the effective date of this Act.

SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any visitor, lawyer, physician, expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

SECTION 11. AMENDMENT. Section 30.1-29-19 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-19. (5-419) Annual reports and accounts.

1. At least once annually and at other times as the court may direct, a conservator ~~must~~ shall file a report and account with the court regarding the exercise of powers and duties specified in the court's order of appointment. The report must describe any expenditure and income affecting the protected person, any sale or transfer of property affecting the protected person, and any exercise of authority by the conservator affecting the protected person.

2. On termination of the protected person's minority or disability, a conservator shall file a final report and accounting and provide a copy of the report or accounting to the protected person. The report or accounting must be filed with the clerk of district court. The filing of the report or accounting ~~and the acceptance by the court or clerk of district court of the report or accounting~~ does not constitute the court's approval of the report or accounting. The court may approve a report and settle and allow an accounting only upon notice to the protected person and other interested persons who have made an appearance or requested notice of proceedings. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to liabilities concerning the matters considered in connection therewith. An order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.
3. Copies of the conservator's annual report to the court and of any other reports required by the court must be mailed by the conservator to the protected person and any interested persons designated by the court in its order. The protected person's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the protected person's right to seek alteration, limitation, or termination of the conservatorship at any time.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 231

HOUSE BILL NO. 1365

(Representatives Vigesaa, Devlin, Skroch)
(Senators Anderson, Dever, O. Larsen)

AN ACT to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

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:

Guardian consent to involuntary treatment with prescribed medication.

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat the patient with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act.

1. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to section 3 of this Act.
2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.

²²³**SECTION 2.** A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.

SECTION 3. A new subsection to section 30.1-28-12 of the North Dakota Century Code is created and enacted as follows:

A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:

223 Section 30.1-28-04 was also amended by section 3 of House Bill No. 1095, chapter 230.

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- a. The proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward requires treatment;
 - b. The ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;
 - c. Prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
 - d. The benefits of the treatment outweigh the known risks to the ward.

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

Approved April 17, 2017

Filed April 17, 2017

JUDICIAL PROOF

CHAPTER 232

HOUSE BILL NO. 1387

(Representatives Roers Jones, Guggisberg, Heinert, Kading)
(Senators Armstrong, Poolman)

AN ACT to create and enact section 31-04-04.2 of the North Dakota Century Code, relating to use of audiovisual equipment for the testimony of a minor or disabled adult witness.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 31-04-04.2 of the North Dakota Century Code is created and enacted as follows:

31-04-04.2. Use of audiovisual equipment for the testimony of minors or disabled adult witnesses.

1. At the time of trial, if the witness is a minor or is a disabled adult as defined in section 12.1-31-07, the court may order the witness's testimony be taken in a room other than the courtroom and be televised by audiovisual equipment in the courtroom if:
 - a. The testimony is taken during the proceeding;
 - b. The judge determines the testimony of the witness in the presence of the defendant would result in the witness suffering serious emotional distress or trauma that would impact the ability of the witness to reasonably communicate; and
 - c. Audiovisual equipment is available.
2. To obtain an order authorizing the use of audiovisual equipment for testimony by a minor or disabled adult witness, the party shall file a written motion with the court no later than fourteen days before the trial.
3. Only the prosecuting attorney, attorney for the defendant, guardian ad litem, and the judge may question the minor or disabled adult witness.
4. The following individuals may be in the room with the witness when the minor or disabled adult provides testimony:
 - a. The prosecuting attorney;
 - b. The guardian ad litem;
 - c. The judge while administering the oath;

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- d. The operators of the audiovisual equipment;
 - e. By order of the court, an individual whose presence contributes to the welfare and well-being of the witness, including an individual who has dealt with the witness in a therapeutic setting; and
 - f. An attorney representing the defendant.
5. The judge and defendant must be allowed to communicate with the individuals in the room where the witness is testifying through audiovisual equipment or by meeting outside the presence of the witness.
6. This section does not preclude the presence of both the witness and the defendant in the courtroom at the same time for purposes of identifying the defendant.

Approved April 17, 2017

Filed April 17, 2017

JUDICIAL REMEDIES

CHAPTER 233

HOUSE BILL NO. 1314

(Representative Guggisberg)

AN ACT to amend and reenact section 32-03.1-02.3 of the North Dakota Century Code, relating to limited liability for use of automated external defibrillators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

32-03.1-02.3. Automated external defibrillators - Requirements~~Liability limited.~~

- ~~1. Except for a medical services facility or prehospital emergency medical services provider, every person who acquires an automated external defibrillator shall:~~
 - ~~a. Require every individual expected to use the automated external defibrillator to receive training in the most recent nationally recognized course in cardiopulmonary resuscitation and automated external defibrillator use;~~
 - ~~b. Maintain and test the automated external defibrillator according to the manufacturer's operational guidelines;~~
 - ~~c. Establish an automated external defibrillator use protocol that provides any person who provides emergency care or treatment to an individual in cardiac arrest by using the automated external defibrillator shall contact, as soon as possible, an appropriate health care provider or emergency medical services provider; and~~
 - ~~d. Consider recommendations of a licensed physician in establishing the training, notification, and maintenance requirements of this subsection.~~

~~2. Any person~~An individual who in good faith and without compensation provides training to use an automated external defibrillator, emergency care by using an automated external defibrillator, or emergency treatment by using an automated external defibrillator is immune from civil liability for any personal injury resulting from the training, emergency care, or emergency treatment and for any act or failure to act in providing or arranging further medical treatment if the personindividual providing the training, emergency care, or emergency treatment acted as an ordinary, reasonable, prudent person would act under the same or similar circumstances. This subsection~~section~~ does not apply if a personal injury results from the gross negligence or from the willful or wanton misconduct of the personindividual providing the training, emergency care, or emergency treatment.

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3. ~~The immunity provision of subsection 2 applies to a licensed physician under subdivision d of subsection 1, the person who provides the training under subdivision a of subsection 1, and This section provides immunity to the person responsible for the site on which the automated external defibrillator is located.~~
 4. This section does not limit civil liability protection provided by any other law.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 234

HOUSE BILL NO. 1088

(Government and Veterans Affairs 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 data breach response and remediation costs.

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:

Data breach response and remediation costs.

The director of the office of management and budget may pay from the risk management fund costs necessary for notification and remediation following a data breach involving a state entity. The director of the office of management and budget, in consultation with the information technology department and the state entity involved, shall determine what measures are to be taken under this section. Expenditures under this section are limited to two hundred fifty thousand dollars per incident and may be made only to the extent the risk management fund can continue to meet current and future liability obligations and the response and remediation costs are not covered through insurance. The director may purchase insurance and approve the purchase of insurance by state entities to cover data breach response and remediation costs. Each state entity shall contribute the appropriate share of its costs under this section as determined by the director.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 235

HOUSE BILL NO. 1336

(Representatives Keiser, D. Anderson, Lefor)
(Senators Klein, Unruh)

AN ACT to provide for limitations of penalties for environmental audits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

Environmental audits - Violations.

1. As used in this section:

- a. "Environmental audit" means a voluntary, internal, and comprehensive evaluation of a facility or activity which is intended to prevent noncompliance with environmental laws, rules, or permits enforced by a regulatory agency under chapter 23-25, 23-20.3, 23-29, 38-08, or 61-28. An environmental audit may be conducted by an owner, operator, or prospective owner or operator. An employee or independent contractor may conduct an environmental audit on behalf of the owner, operator, or prospective owner or operator.
 - b. "Environmental audit report" means a set of documents labeled "Environmental Audit Report: Privileged Document" prepared as a result of an environmental audit which must include a description of the scope of the audit; the information gained in the audit and findings, conclusions, and recommendations; and exhibits and appendices. The exhibits and appendices to the environmental audit report may include interviews with current or former employees, field notes and records of observations, findings, opinions, suggestions, conclusions, guidance, notes, drafts, memoranda, legal analyses, drawings, photographs, laboratory analyses and other analytical data, computer-generated or electronically recorded information, maps, charts, graphs, and surveys and other communications associated with an environmental audit.
 - c. "Regulatory agency" means the agency with regulatory authority over the facility or activity.
 - d. "Willfully" has the same meaning as provided under section 12.1-02-02.
2. A regulatory agency may not pursue civil penalties for a violation found during an environmental audit which the regulated entity discloses to the regulatory agency in writing within forty-five days after the violation is found, unless:
- a. The violation caused imminent or substantial harm to human health or the environment;
 - b. The violation is found by the regulatory agency before the regulated entity discloses the violation in writing to the regulatory agency;

- c. The regulated entity does not correct the violation within sixty days of discovery or, if correction within sixty days is not possible, within a reasonable period as agreed upon in writing by the regulatory agency, but not to exceed three hundred sixty-five days;
 - d. The regulated entity established a pattern of repeated violations of environmental law, rule, permit, or order by committing the same or similar violation that resulted in the imposition of a penalty by a regulatory agency more than once within two years before the date of the disclosure;
 - e. The regulated entity willfully violated a state or federal environmental law, rule, or permit;
 - f. The violation is a result of gross negligence, as defined under section 1-01-17; or
 - g. The regulatory agency assumed primacy over a federally delegated environmental program and a waiver of penalty authority for the violation would result in a state program less stringent than the federal program or the waiver would violate any federal rule required to maintain primacy. If a federally delegated program requires the imposition of a penalty for a violation, to the extent allowed under federal law or rule, the voluntary disclosure must be considered a mitigating factor in determining the penalty amount.
3. To qualify for a penalty exemption under subsection 2, the regulated entity shall notify the regulatory agency in writing before beginning the environmental audit. The notice must specify the facility or portion of the facility to be audited, the audit's anticipated start date, and the general scope of the audit. Unless the regulatory agency agrees in writing to an extension, the environmental audit must be completed within one hundred eighty days of the start date. This section may not be construed to authorize uninterrupted or continuous environmental audits.
 4. Reporting a violation is mandatory if the reporting is required under chapter 23-25, 23-20.3, 23-29, 38-08, or 61-28, any rule or permit implementing those chapters, any federal law or rule, or any administrative or court order.
 5. Notwithstanding subsection 2, the regulatory agency may pursue civil penalties against a regulated entity for a violation disclosed under this section if the regulatory agency finds the regulated entity:
 - a. Intentionally misrepresented material facts concerning the violation disclosed or the nature or extent of any damage to human health or the environment; or
 - b. Initiated a self-audit to avoid liability for a violation after the regulated entity's knowledge or imminent discovery.
 6. Unless the privilege is expressly waived by the regulated entity that prepared the report, an environmental audit report is privileged and not admissible evidence in a civil action or proceeding. The regulated entity asserting this privilege has the burden of proving the privilege. The privilege does not apply to:

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- a. Information relating to the types of violations listed in subsection 2.
 - b. Information relating to a violation subject to a regulatory agency's finding under subsection 5.
 - c. Disclosures, notifications, and other information provided by the regulated entity to the regulatory agency under this section.
7. Failure to label a document in an exhibit or appendix to an environmental audit report does not constitute a waiver of the audit privilege under this section or create a presumption the privilege does not apply.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 236

HOUSE BILL NO. 1197

(Representatives K. Koppelman, Jones, Kasper, Keiser, D. Ruby)
(Senators Campbell, Klein, Krebsbach)

AN ACT to create and enact a new chapter to title 32 of the North Dakota Century Code, relating to asbestos bankruptcy trust transparency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 32 of the North Dakota Century Code is created and enacted as follows:

Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in title 29, Code of Federal Regulations, part 1910.
2. "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance, and any other derivative claim made by or on behalf of an individual exposed to asbestos or a representative, spouse, parent, child, or other relative of the exposed individual. This term does not include a claim for compensatory benefits pursuant to workers' compensation or veterans' benefits.
3. "Asbestos trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C. 524(g), 11 U.S.C. 1121(a), or other applicable provision of law intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.
4. "Plaintiff" means an individual asserting an asbestos action, a decedent if the action is brought on behalf of an estate, and a parent or guardian if the action is brought on behalf of a minor or legally incapacitated individual.
5. "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions, trial testimony, work history, medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the trust claim has settled, all documents relating to the settlement of the trust claim.

6. "Trust governance documents" means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization for an asbestos trust.
7. "Veterans' benefits" means a program administered by the veterans' administration under 38 U.S.C.
8. "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases, injuries, disability, or death caused by an individual's occupation. The term does not include 45 U.S.C. 51.

Required disclosures by plaintiff.

1. Within thirty days after an asbestos action is filed, the plaintiff shall:
 - a. Provide the court and parties with a sworn statement signed by the plaintiff and plaintiff's counsel indicating an investigation of all asbestos trust claims has been conducted and all asbestos trust claims that could be made by the plaintiff have been filed. The sworn statement must indicate whether a request has been made to defer, delay, suspend, or toll any asbestos trust claim and provide the disposition of each asbestos trust claim.
 - b. Provide parties with all trust claims materials, including materials related to the conditions other than those that are the basis for the asbestos action and any materials from all law firms connected to the plaintiff in relation to the plaintiff's exposure to asbestos.
 - c. Produce all available trust claims materials submitted to any asbestos trusts by other individuals if the plaintiff's asbestos trust claim is based on exposure to asbestos through those individuals.
2. The plaintiff shall supplement the information and materials required under this section within thirty days after supplementing an existing asbestos trust claim, receiving additional information or materials related to an asbestos trust claim, or filing an additional asbestos trust claim.
3. The court may dismiss an asbestos action if the plaintiff fails to comply with this section.
4. An asbestos action may not proceed to trial until at least one hundred eighty days after the requirements of this section have been met.

Identification of additional or alternative asbestos trust by defendant.

1. A defendant may file a motion requesting a stay of the proceedings by the later of the seventy-fifth day before the trial is set to commence or the fifteenth day after the defendant first obtains information supporting additional trust claims by the plaintiff. The defendant shall produce or describe the documentation the defendant possesses or of which the defendant is aware in support of the motion. Before filing the motion, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional trust claim.
2. Within ten days of receiving the defendant's motion, the plaintiff shall:

- a. File the asbestos trust claims;
 - b. File a written response with the court stating why insufficient evidence exists for the plaintiff to file the asbestos trust claims; or
 - c. File a written response with the court requesting a determination that the cost to file the asbestos trust claims exceed the plaintiff's reasonably anticipated recovery.
3. If the court determines there is a sufficient basis for the plaintiff to file an asbestos trust claim, the court shall stay the asbestos action until the plaintiff files the asbestos trust claim and produces all related trust claims materials.
 4. If the court determines the cost of submitting an asbestos trust claim exceeds the plaintiff's reasonably anticipated recovery, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified asbestos trust.
 5. The court may not schedule the asbestos action for trial until at least sixty days after the plaintiff files the documentation required under this section.

Discovery - Use of materials.

1. Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. A claim of privilege does not apply to any trust claims materials or trust governance documents.
2. A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege to bar discovery and shall provide consent or other expression of permission as required by the asbestos trust to release information and materials sought by the defendant.
3. Trust claims materials sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the trust was established to provide compensation and that such exposure may be a substantial contributing factor in causing the plaintiff's injury.

Trust record.

At least thirty days before trial, the plaintiff shall provide the court with documentation identifying each claim the plaintiff has made against an asbestos trust. The court shall enter the documentation into the record.

Failure to provide information - Sanctions.

1. The court may impose any sanction provided by court rule or law upon the motion of a defendant or judgment debtor seeking sanctions or other relief for failure to comply with the requirements of this chapter.
2. If the plaintiff files an asbestos trust claim after the plaintiff obtains a judgment and the asbestos trust was in existence at the time of the judgment, the trial court upon motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to adjust the judgment by the amount of any

subsequent asbestos trust payments obtained by the plaintiff and to order additional relief to the parties.

3. A defendant or judgment debtor may file a motion under this section within one year after the court enters a final judgment.

Approved April 14, 2017

Filed April 17, 2017

LIVESTOCK

CHAPTER 237

HOUSE BILL NO. 1348

(Representatives D. Anderson, Boschee, C. Johnson, M. Nelson, Schmidt)
(Senators Bekkedahl, Dotzenrod, Klein, Oban, Piepkorn, Vedaa)

AN ACT to amend and reenact section 36-21.2-05 of the North Dakota Century Code, relating to the seizure of animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-21.2-05 of the North Dakota Century Code is amended and reenacted as follows:

36-21.2-05. Seizure of animal - Court order.

1. A law enforcement officer, upon a recommendation from a licensed veterinarian approved by the board of animal health, may petition the court for an order directing the seizure of any animal believed to have been neglected, abused, treated cruelly, or subjected to any act or omission in violation of this chapter.
2. The court, upon a recommendation from a licensed veterinarian approved by the board of animal health, may act without notice to the animal's owner or to the person having custody or control of the animal and may rely solely on testimony or an affidavit in considering the petition.
3. In the order for seizure, the court may direct that a veterinarian humanely destroy an animal if the veterinarian, upon examining the animal, determines that the animal is experiencing excruciating pain or suffering and that the animal's pain or suffering is not likely to be alleviated using reasonable medical interventions.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 238

HOUSE BILL NO. 1131

(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to create and enact section 36-24-01.1 of the North Dakota Century Code, relating to adoption of federal meat inspection regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 36-24-01.1 of the North Dakota Century Code is created and enacted as follows:

36-24-01.1. Federal meat inspection regulations.

All federal meat and poultry inspection regulations effective as of August 1, 2016, as provided under title 9, Code of Federal Regulations, parts 301-320, 325, 329, 381, 391, 416-418, 424, 430, 441, 442, and 500, but excluding parts 307.5 and 381.38, are incorporated by reference and made a part of this title.

Approved March 2, 2017

Filed March 3, 2017

MILITARY

CHAPTER 239

HOUSE BILL NO. 1090

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact subsection 1 of section 37-19.1-04, subsection 6 of section 44-04-18.4, subsection 8 of section 54-06-25, sections 54-06-26 and 54-44.3-01.2, subsection 2 of section 54-44.3-03, and sections 54-44.3-05 and 54-44.4-02.1 of the North Dakota Century Code, relating to bids and proposals received by public entities, notification of nonapplicability of veteran's preference, electronic ballot submission, long distance tolls, salary compensation comparison records, state personnel board vacancy filling procedures, secret ballot election rules, and reports of services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen calendar days after receipt of notification by certified mail or through the online recruiting solution system 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 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.

¹⁰⁸ **SECTION 2. AMENDMENT.** Subsection 6 of section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

6. Unless made confidential under subsection 1 or made exempt under subsection 5, ~~bids or proposals;~~
 - a. ~~Bids received by a public entity in response to a request for proposals an invitation for bids by the public entity are exempt until all of the proposals/bids have been received and opened by the public entity or until all oral presentations regarding the proposals, if any, have been heard.~~
 - b. ~~Proposals received by the public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.~~
 - c. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.

SECTION 3. AMENDMENT. Subsection 8 of section 54-06-25 of the North Dakota Century Code is amended and reenacted as follows:

8. The ballot must be prepared by the division and distributed to each agency and institution payroll officer. An officer of each agency and institution shall provide mailing labels for all qualified employees to the division upon the division's request. A ballot for the election must be distributed ~~with to~~ each ~~employee's payroll check~~ employee on the employee's regularly scheduled payday. The division may allow for a process by which electronic ballots are submitted by employees to elect a candidate to the commission.

SECTION 4. AMENDMENT. Section 54-06-26 of the North Dakota Century Code is amended and reenacted as follows:

54-06-26. Use of state telephones by state officials and employees.

Notwithstanding any other provision of law, an appointed or elected state official or a state employee may use a state telephone to receive or place a local call for essential personal purposes to the extent that use does not interfere with the functions of the official's or employee's agency, department, or institution. ~~When an appointed or elected state official or state employee is away from the official's or employee's residence for official state business and long distance tolls would apply for the official or employee to call the official's or employee's city of residence, the official or employee is entitled to make at least one long distance call per day at state expense.~~ Each state agency, department, or institution may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

SECTION 5. AMENDMENT. Section 54-44.3-01.2 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-01.2. 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

¹⁰⁸ Section 44-04-18.4 was also amended by section 1 of House Bill No. 1108, chapter 309, section 1 of Senate Bill No. 2295, chapter 312, and section 54 of Senate Bill No. 2327, chapter 199.

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. Any salary information collected from private businesses for the purpose of conducting compensation comparisons is exempt from public disclosure. Records naming private businesses from which salary information is collected are open.

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 6. AMENDMENT. Subsection 2 of section 54-44.3-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The term of each member of the board, except the director, must be for six years. The director's term coincides with employment as director. Any permanent vacancy in office must be filled by the eligible person who received the next highest vote total in the previous election. If the eligible person is not

available for the unexpired term the permanent vacancy in office must be filled in the same manner as the selection of the person vacating the office.

SECTION 7. AMENDMENT. Section 54-44.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-05. Election committee~~Secret ballot election - Guidelines.~~

~~The governor, the secretary of state, and the attorney general shall constitute a three-member committee to develop rules and regulations~~guidelines for a secret ballot election among all employees eligible under sections 54-44.3-19 and 54-44.3-20 to carry out the election of the two members of the board elected by classified employees. All elections of members of the board are the responsibility of the director who will ensure that proper and due notification is given to all employees in sufficient time to enable potential candidates to initiate necessary petitions and conduct campaigns. Nominees for candidacy are required to submit petitions containing no less than ~~two~~one hundred names of employees in good standing classified under sections 54-44.3-19 and 54-44.3-20. All elections will be conducted through a secret ballot process.

SECTION 8. AMENDMENT. Section 54-44.4-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-02.1. Procurement of services.

All services purchased by the office of management and budget or by an agency or institution in the executive branch of state government must comply with the standards and guidelines for procurement of services established by the office of management and budget. ~~Before March first of each year, each agency or institution in the executive branch of state government which purchases services shall file with the office of management and budget a report regarding the services purchased the preceding year. The report must be provided on forms established and made available by the office of management and budget.~~

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 240

HOUSE BILL NO. 1109

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-01-03 and 37-01-43, subsection 6 of section 37-28-02, and section 37-28-03 of the North Dakota Century Code, relating to the operation of the North Dakota national guard.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-03 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, ~~2012~~2016 edition, 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 military duty, to include state active 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. Commanders may administer nonjudicial punishment for offenses while on military duty, to include state active duty, in accordance with part V, Manual for Courts-Martial, except that the service member may not demand a trial by courts-martial. 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 37-01-43 of the North Dakota Century Code is amended and reenacted as follows:

37-01-43. North Dakota military civil relief act.

A person called or ordered to active service for thirty consecutive days or longer has all of the protections afforded to persons in the military service of the United States under the Servicemembers Civil Relief Act [~~50 App. U.S.C. Sections 501-596~~50 U.S.C. sections 3901-4043] in effect on December 31, ~~2014~~2016.

SECTION 3. AMENDMENT. Subsection 6 of section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

6. "Period of service" means the period of time beginning December 5, 1992, and ending June 30, ~~2017~~2019.

SECTION 4. AMENDMENT. Section 37-28-03 of the North Dakota Century Code is amended and reenacted as follows:

37-28-03. Payment of adjusted compensation for domestic and foreign service.

Each national guard or reserve component resident veteran mobilized stateside is entitled to fifty dollars for each month or major fraction thereof for domestic service. Each national guard, reserve, or active component resident veteran of foreign service who received the expeditionary medal or campaign badge is entitled to one hundred dollars for each month or major fraction thereof. If the veteran received a purple heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation related to the mobilization during which the purple heart was earned. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this chapter to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general through June 30, ~~2017~~2019, or in the case of a soldier mobilized on June 30, ~~2017~~2019, not later than six months after the end of the mobilization period of service.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 241

HOUSE BILL NO. 1104

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-01-04 of the North Dakota Century Code, relating to the governor's authority to call out the national guard.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-04 of the North Dakota Century Code is amended and reenacted as follows:

37-01-04. Governor's authority to order out national guard - Reserve militia ordered out.

In case of insurrection, invasion, tumult, riot, breach of the peace, cyber attack, or imminent danger thereof, to provide a presence at state ceremonial events, to provide assistance to political entities in search and rescue efforts or to respond to a potential natural or environmental hazard or nuisance, or to perform training activities, the governor may order into the active service of this state any part of the national guard that the governor may deem proper. When the national guard of this state, or a part thereof, is called forth under the Constitution of the United States and the laws of the United States, the governor shall order out for service the remaining troops or such part thereof as may be necessary. If the number of available troops is insufficient, the governor shall order out such part of the reserve militia as the governor may deem necessary.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 242

SENATE BILL NO. 2107

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to create and enact section 37-01-47 of the North Dakota Century Code, relating to health insurance coverage for national guard service members; to amend and reenact sections 37-04-08 and 37-07-05 of the North Dakota Century Code, relating to pay and benefits of national guard members; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 37-01-47 of the North Dakota Century Code is created and enacted as follows:

37-01-47. Health insurance coverage while on state active duty.

During the period of active duty, the national guard may pay any primary health insurance premium on behalf of a national guard service member or an employer-sponsored health insurance premium cost share paid by the service member while called to state active duty. Coverage of qualifying premium payment is subject to rules set forth by the adjutant general's office and subject to available funds.

SECTION 2. AMENDMENT. Section 37-04-08 of the North Dakota Century Code is amended and reenacted as follows:

37-04-08. Pay received by commissioned officers of the national guard.

Every commissioned officer of the national guard ~~shall~~ is entitled to receive from this state, while engaged in any service ordered by the governor, pay and allowances at the rate allowed by law to officers of similar rank and length of service in the United States army. ~~If ordered to active duty by the governor in response to an emergency management assistance compact request and if the requesting state pays state active duty pay at a higher rate than this state, the commissioned officer is entitled to the higher rate of pay.~~ Each commissioned officer of the national guard ~~shall also~~ is entitled to receive a state active duty pay enhancement of ~~one~~ three hundred dollars for every ~~fourteen consecutive days~~ month spent on state active duty ~~or a prorated amount for each day of state active duty up to three hundred dollars per month.~~ The adjutant general and deputy assistant adjutant general when receiving salary from the state and not on active duty in a federal status ~~shall~~ are entitled to receive such compensation as may be appropriated by the legislative assembly for that purpose, provided that when the adjutant general receives compensation from the government of the United States as director of selective service, such compensation must be deducted from the compensation otherwise due the adjutant general from the state and the adjutant general may be paid from state funds only the difference, if any, between the compensation from the United States and the compensation provided in this section.

SECTION 3. AMENDMENT. Section 37-07-05 of the North Dakota Century Code is amended and reenacted as follows:

37-07-05. Pay and allowances of enlisted national guard members - Deductions allowed.

1. Each enlisted member of the national guard, when called into active service by the governor, ~~shall~~ is entitled to receive pay at the rate provided for enlisted personnel of similar grade, rating, and term of enlistment in the national guard of the United States, except that such daily pay rate for each of the grades hereafter listed must be increased by the percentage set forth after such grade as follows:
 1. a. E-3 55%
 2. b. E-4 45%
 3. c. E-5 35%
 4. d. E-6 25%
 5. e. E-7 15%
 6. f. E-8 10%
2. If ordered by the governor in response to an emergency management assistance compact request and if the requesting state pays state active duty pay at a higher rate than this state, the enlisted member may receive the higher rate of pay if the requesting state reimburses this state for the higher rate of pay. Each enlisted member ~~shall~~ also is entitled to receive transportation, shelter, and subsistence. The value of articles issued to any member of a company or battery and not returned in good order on demand, and all legal fines or forfeitures, may be deducted from the member's pay. Each enlisted member ~~shall~~ also is entitled to receive a state active duty pay enhancement of ~~one~~ three hundred dollars for every ~~fourteen consecutive days~~ month spent on state active duty or a prorated amount for each day of state active duty up to three hundred dollars per month. Pay at an annual encampment must be such as is allowed by federal law.

SECTION 4. RETROACTIVE APPLICATION. Section 1 of this Act applies retroactively to eligible expenses incurred by national guard service members called to state active duty in response to protest activities since August 19, 2016.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 243

HOUSE BILL NO. 1106

(Political Subdivisions Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-04 of the North Dakota Century Code, relating to definitions of disasters and emergencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-04. Definitions.

As used in this chapter:

1. "Critical industry sectors" means any of the critical infrastructure sectors identified by the United States government whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States and the state that the sectors' incapacitation or destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof.
2. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, or cyber attack which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
- 2-3. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision.
- 3-4. "Emergency" means any situation that is determined by the governor to require state or state and federal response or mitigation actions to immediately protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster. Emergencies require an immediate supplement to local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster or aid to critical industry sectors that provide essential lifeline services.
- 4-5. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to prevent, mitigate, prepare for, respond to, and recover from known and unforeseen hazards or

situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.

- 5-6. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.
- 6-7. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
- 7-8. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.
- 8-9. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.
- 9-10. "Wide area search and rescue" means the employment, coordination, and utilization of available resources and personnel in activities occurring within large geographical areas for the purpose of locating, relieving distress, and preserving the life of an individual reported or believed to be lost, stranded, or deemed a high-risk missing individual, and removing any survivor to a place of safety.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 244

SENATE BILL NO. 2110

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-07.1 of the North Dakota Century Code, relating to hazardous chemical preparedness and response program fees and fines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-07.1. Hazardous chemicals preparedness and response program.

1. Program components.
 - a. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.
 - b. In conjunction with the state emergency response commission, the local emergency planning committees, as appointed by the boards of county commissioners, and the local emergency management organizations shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
 - c. The director of the division of homeland security shall serve as the chairman of the state emergency response commission. In the absence of the chairman, the designated vice chairman shall serve as chairman. The state emergency response commission by vote will select the vice chairman to fulfill a two-year term. The chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of homeland security.
 - d. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.
 - e. For purposes of monitoring, determining if emergency response may be required, and notifying local officials, owners and operators or responsible parties shall report all spills or discharges to the appropriate state agency

as required by law. The report must include the name of the reporting party, including phone number and address; date; time of release; location of release; containment status; name of the chemical, if waterways are involved; and immediate potential threat. If the release occurs or travels offsite from a facility, the owner and operator or responsible party shall notify the surface owner within a reasonable time. State agencies that receive direct reports of spills or discharges shall provide the report information to the division within a time that is consistent with potential level of response needed.

2. Establishment of funds.

- a. There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the legislative assembly. Moneys in the fund shall be appropriated biennially to the division of homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
- b. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40-CFR-355.20 title 40, Code of Federal Regulations, part 355.20, or its successor which is required under section 312 of SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40-CFR-370.20 title 40, Code of Federal Regulations, part 20. The maximum fee for a facility under this section is four hundred seventy-five dollars. The director of the homeland security division may impose fees for both late filing of reports and late payment of fees. A late fee must equal the amount of the hazardous chemicals fee owed under this subdivision. After six months the director shall process further violations under willful violations in subsection 4. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the ~~funds~~ regular fees collected from the state's hazardous chemicals fee system.
- d. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.

- e. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response programs to include training, exercising, equipment, response, and salaries, and local emergency planning committee member stipends not to exceed thirty percent of state per diem per meeting attended. In lieu of stipends the committee chairman may provide a meal or refreshments other than alcoholic beverages.
 - f. "Hazardous chemical" means as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20 and ~~29 CFR 1910.1200~~title 29, Code of Federal Regulations, part 1910.1200.
 - g. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.
3. a. A person who causes a release, as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20, of a hazardous chemical in excess of the reportable quantity of that chemical, as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20, is liable for the response costs incurred by state or local hazardous chemical response personnel. The state agency, local agency, volunteer organization, or hazardous chemical response personnel, as identified in the state or local emergency operations plan, which undertakes a response action may recover those response costs in an action brought before a court of competent jurisdiction. If more than one jurisdiction, organization, or agency incurs response costs for the same hazardous chemical release or incident, those hazardous chemical response jurisdictions, agencies, organizations, or personnel may file a joint action and may designate one entity to represent the others in the action.
 - b. In the action to recover reasonable and necessary response costs, state agencies, local agencies, or volunteer organizations may include operational, administrative, personnel, and legal costs incurred from its initial response action up to the time that it recovers its cost. Reasonable and necessary costs are those additional costs incurred that are a result of the responsible party's failure or inability to implement or initiate the necessary actions to protect life, property, and the environment.
4. a. A person who willfully violates any of the reporting, planning, or notification requirements outlined in the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C. 11001 et seq.], ~~or fails to pay a state hazardous chemicals fee~~ is subject to a civil fine of not more than fifteen thousand dollars for each separate offense. For purposes of this subdivision, each day of continued violation constitutes a separate offense. All civil fines collected under this subdivision must be deposited in the state general fund. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the civil fines established in this subdivision.
 - b. Any person who knowingly falsifies information or who intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of state or local government or state or local hazardous

chemicals response personnel attempting to perform duties and functions in state or local emergency operations plans or complying with Public Law 99-499, SARA title III, is guilty of a class B misdemeanor. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.

5. If the director of the division of homeland security determines that a violation of this chapter has occurred, the director shall make all evidence available to the attorney general for use in any remedial action the attorney general's office determines appropriate, including injunctive relief. Nothing in this section may be construed to deny use of the remedies authorized under chapter 32-40.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 245

SENATE BILL NO. 2050

(Government and Veterans Affairs Committee)
(At the request of the Information Technology Department)

AN ACT to amend and reenact subsection 1 of section 37-17.3-02.2 of the North Dakota Century Code, relating to the statewide interoperability executive committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁹ **SECTION 1. AMENDMENT.** Subsection 1 of section 37-17.3-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The statewide interoperability executive committee consists of:
 - a. The director of state radio or a designee;
 - b. The director of the division of homeland security or a designee;
 - c. The superintendent of the highway patrol or a designee;
 - d. The adjutant general or a designee;
 - e. The director of the department of transportation or a designee;
 - f. A representative of the North Dakota sheriff's and deputies association;
 - g. A representative of the North Dakota emergency managers association;
 - h. A representative of the North Dakota fire chiefs association;
 - i. A representative of the North Dakota emergency medical services association;
 - j. A representative of the North Dakota police chiefs association;
 - k. A representative of the North Dakota peace officers association;
 - l. A representative of the North Dakota 911 association; ~~and~~
 - m. The North Dakota chief information officer or a designee; and
 - n. The North Dakota Indian affairs commission executive director or a designee.

Approved March 13, 2017

Filed March 13, 2017

¹⁰⁹ Section 37-17.3-02.2 was also amended by section 2 of House Bill No. 1178, chapter 247, and section 7 of Senate Bill No. 2021, chapter 46.

CHAPTER 246

SENATE BILL NO. 2106

(Political Subdivisions Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.3-08 of the North Dakota Century Code, relating to the state radio fee system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 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 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.
2. ~~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.~~
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 forty dollars per month.

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- b. County population of five thousand or more but less than ten thousand shall pay eighty dollars per month.
 - c. County population of ten thousand or more but less than fifteen thousand shall pay one hundred twenty dollars per month.
 - d. County population of fifteen thousand or more but less than twenty-five thousand shall pay one hundred sixty dollars per month.
 - e. County population of twenty-five thousand or more shall pay two hundred dollars per month.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 247

HOUSE BILL NO. 1178

(Representatives Porter, Heinert, Nathe, Owens)
(Senators D. Larson, G. Lee, Wardner)

AN ACT to create and enact a new section to chapter 37-17.3 of the North Dakota Century Code, relating to the creation of a statewide interoperable radio network fund; to amend and reenact subsection 1 of section 37-17.3-02.2, subsection 4 of section 54-59-05, section 57-40.6-02, and subsection 1 of section 57-40.6-14 of the North Dakota Century Code, relating to the statewide interoperability executive committee, the powers and duties of the information technology department, the assessed communications service fee, and the prepaid wireless emergency 911 fee; to authorize borrowing authority; to provide an appropriation; to provide statements of legislative intent; to provide for a budget section report; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-17.3 of the North Dakota Century Code is created and enacted as follows:

Statewide interoperable radio network fund.

1. A fund known as the statewide interoperable radio network fund must be maintained in the state treasury. Subject to legislative approval and statewide interoperability executive committee approval, moneys in the fund must be used for providing the required state share of funding for expenses associated with the purchase, installation, operation, and maintenance of a statewide interoperable radio network. The fund consists of all moneys transferred into the fund, interest earned on moneys in the fund, payments to the fund, and other fund earnings.
2. The chief information officer of the information technology department may apply for and accept funds, grants, gifts, or services made available for the statewide interoperable radio network by an agency or department of the federal government or any other person. Any funds, grants, or gifts, or moneys received from services received under this section must be deposited in the statewide interoperable radio network fund.
3. Revenue received by a political subdivision in accordance with subsection 2 of section 57-40.6-02 must be remitted to the state treasurer for deposit in the statewide interoperable radio network fund.

¹¹⁰ **SECTION 2. AMENDMENT.** Subsection 1 of section 37-17.3-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The statewide interoperability executive committee consists of:

¹¹⁰ Section 37-17.3-02.2 was also amended by section 7 of Senate Bill No. 2021, chapter 46, and section 1 of Senate Bill No. 2050, chapter 245.

- a. The director of state radio or a designee;
- b. The director of the division of homeland security or a designee;
- c. The superintendent of the highway patrol or a designee;
- d. The adjutant general or a designee;
- e. The director of the department of transportation or a designee;
- f. A representative of the North Dakota sheriff's and deputies association;
- g. A representative of the North Dakota emergency managers association;
- h. A representative of the North Dakota fire chiefs association;
- i. A representative of the North Dakota emergency medical services association;
- j. A representative of the North Dakota police chiefs association;
- k. A representative of the North Dakota peace officers association;
- l. A representative of the North Dakota 911 association; and
- m. The North Dakota chief information officer or a designee;
- n. The North Dakota Indian affairs commission executive director or a designee; and
- o. One member of the North Dakota house of representatives and one member of the North Dakota senate appointed by the legislative management.

SECTION 3. AMENDMENT. Subsection 4 of section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. With the exception of agreements entered related to the statewide interoperable radio network, an agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative management or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. With the exception of financing for the statewide interoperable radio network, the department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.

SECTION 4. AMENDMENT. Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-02. Authority of counties or cities to impose fee on 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. Prepaid wireless service is not subject to the fee imposed under this section.
2. A political subdivision shall add a fee of fifty cents to the fee imposed on assessed communications services established under subsection 1. The additional fifty cents per communication connection must be remitted to the state treasurer for deposit in the statewide interoperable radio network fund in accordance with section 1 of this Act for implementing a statewide interoperable radio network. The funds collected under this subsection must be expended in a manner consistent with the recommendations of the statewide interoperability executive committee.
3. 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.
- ~~3-4.~~ 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.
- ~~4-5.~~ In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
- ~~5-6.~~ 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 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 911 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.

- ~~6-7.~~ 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 ~~34~~.

SECTION 5. AMENDMENT. Subsection 1 of section 57-40.6-14 of the North Dakota Century Code is amended and reenacted as follows:

1. There is imposed a prepaid wireless emergency 911 fee of two and one-half percent on the gross receipts of sellers from all sales at retail of prepaid wireless services in this state.
 - a. A retail transaction that is made, in person, by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state under the provisions of chapter 57-39.4 as those provisions apply to a prepaid wireless calling service.
 - b. Prepaid wireless emergency 911 fees collected by sellers shall be remitted to the commissioner.
 - c. An entity required to collect and remit the prepaid wireless emergency 911 fee shall register with the commissioner. The registration shall be made in the form prescribed by the commissioner, in which the registrant shall identify the name under which the registrant transacts or intends to transact business, the location of the business, the federal identification number, and other information as the commissioner may require.
 - d. Gross receipts from sales at retail of prepaid wireless services are exempt from the prepaid wireless emergency 911 fee imposed by this section when the sale is made to a person entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04.

SECTION 6. STATEWIDE INTEROPERABLE RADIO NETWORK IMPLEMENTATION - FUTURE EXPENDITURES. During the 2017-18 interim, the information technology department shall begin implementation of a statewide interoperable radio network based on findings in the North Dakota statewide interoperable network feasibility study and its recommendations as adopted by the statewide interoperability executive committee. Current and future appropriations and local government contributions for improvement or expansion of state or local public safety land mobile radio systems must be expended in a manner consistent with the recommendations of the statewide interoperability executive committee and only for solutions that are determined by the committee to be interoperable and functional with the statewide system.

SECTION 7. LOAN AUTHORIZATION - APPROPRIATION - STATEWIDE INTEROPERABLE RADIO NETWORK - BUDGET SECTION REPORTS.

The information technology department may obtain a loan, subject to budget section approval, from the Bank of North Dakota in an amount not to exceed \$15,000,000, the sum of which is appropriated to the information technology department, for the purpose of defraying the expenses of the statewide interoperable radio network for the biennium beginning July 1, 2017, and ending June 30, 2019. The term of the loan may not exceed six years. The loan authorized in this section must be repaid from funds available in the statewide interoperable radio network fund. During the 2017-18 interim, the information technology department shall provide status reports to the budget section regarding the implementation and progress of the statewide interoperable radio network.

SECTION 8. LEGISLATIVE INTENT - RADIO FREQUENCIES. By September 30, 2018, all North Dakota entities operating a public-safety answering point shall relinquish legal rights to any radio frequency required for the statewide interoperable radio network trunk system, allowing these frequencies to be utilized by the state of North Dakota for the use of this network.

SECTION 9. LEGISLATIVE INTENT - STATEWIDE INTEROPERABLE RADIO NETWORK CONSOLIDATION. It is the intent of the sixty-fifth legislative assembly that during the 2017-18 interim, the information technology department and statewide interoperability executive committee make efforts to consolidate certain functions within the statewide interoperable radio network.

SECTION 10. EXPIRATION DATE. This Act is effective through July 31, 2023, and after that date is ineffective.

Approved April 25, 2017

Filed April 25, 2017

CHAPTER 248

SENATE BILL NO. 2199

(Senators Cook, Bekkedahl, Laffen)
(Representatives Dockter, Headland, Louser)

AN ACT to create and enact chapter 37-17.5 of the North Dakota Century Code, relating to facilitating entry of an out-of-state business to perform disaster or emergency remediation work in this state on critical natural gas, electrical, and telecommunication transmission infrastructure and to provide a limited exemption for that purpose from state and local taxes and fees, licensing, and other requirements during the time in this state employed in disaster or emergency remediation work.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 37-17.5 of the North Dakota Century Code is created and enacted as follows:

37-17.5-01. Definitions.

As used in this chapter:

1. "Critical infrastructure" means real and personal natural gas, electrical, and telecommunication transmission property so vital to the state that the incapacity or destruction of that natural gas, electrical transmission or distribution system, or telecommunications transmission system would have a debilitating impact on public health or safety and the economic and physical security of the state or region.
2. "Declared state disaster or emergency" means a disaster or emergency event for which a:
 - a. Disaster or emergency has been declared by the governor; or
 - b. Presidential declaration of a federal major disaster or emergency has been issued.
3. "Disaster or emergency remediation work" means repair or replacement of critical infrastructure that has been, or is under threat of being damaged, impaired, or destroyed by the declared state disaster or emergency.
4. "Disaster response period" means a period that begins ten days before, and ends sixty calendar days after, the declared state disaster or emergency and includes any extension of that time provided by executive order of the governor.
5. "Out-of-state business" means a business entity, including an out-of-state business affiliated solely through common ownership with a business registered in this state, which did not have a business presence in this state before the disaster remediation period and which is in this state to perform disaster or emergency remediation work at the request of a requesting entity.

6. "Out-of-state employee" means an employee who is not a North Dakota resident employed by an out-of-state business.
7. "Registered business" means a business entity registered to do business in this state before the declared state disaster or emergency.
8. "Requesting entity" means an officer or agency of this state, a political subdivision, or a business registered in this state.
9. "State agency" means job service North Dakota, the secretary of state, the tax commissioner, or workforce safety and insurance.

37-17.5-02. Business and employee status during and after disaster response period.

1. An out-of-state business that conducts operations within this state for purposes of performing disaster or emergency remediation work or services during the disaster response period may not be considered to have established a business presence that would require that business or its out-of-state employees to be subject to any state and local taxes or fees including unemployment insurance, workers' compensation, or taxes administered by the tax commissioner. The out-of-state business or out-of-state employee shall have a valid license to perform that business or occupation from the principal state of business or employment.
2. During the disaster response period, the out-of-state business or out-of-state employee may not be required to file or pay any state or local tax administered by a state agency. The out-of-state business or out-of-state employee may not be required to pay any sales and use tax on equipment used or brought into this state temporarily for use during the disaster response period if the equipment is removed from this state within a reasonable period of time after the disaster response period.
3. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out-of-state business conducted in this state under this chapter must be disregarded with respect to any filing requirements for a tax, including the income tax return required for a unitary or combined group of which the out-of-state business may be a part. For the purpose of apportioning income, the apportionment factors attributable to the performance by an out-of-state business of any work under this chapter may not be sourced to this state by the out-of-state business or any member of its affiliated group.
4. An out-of-state employee may not be considered to have established a presence in this state which would require that individual or that individual's employer to file or pay income taxes, be subject to income tax withholding, or file and pay any other state or local tax or fee during the disaster response period. This includes any tax or fee imposed by a state agency but does not include any transaction taxes or fees described in subsection 5.
5. Out-of-state businesses and out-of-state employees are subject to fuel taxes and state or local sales or use taxes on materials or services purchased, consumed, or used in this state which are subject to sales or use taxes, hotel taxes, or car rental taxes or fees which the out-of-state affiliated business or out-of-state employee purchases for use or consumption in this state during the disaster response period.

6. Any out-of-state business or out-of-state employee that remains in this state after the disaster response period is subject to any business or employee registration and tax requirements that apply.
7. An employee's sole remedy for a workplace injury under this section is the employee's out-of-state employer's workers compensation policy.

37-17.5-03. Notification by out-of-state business during and after disaster response period.

1. An out-of-state business that enters this state for disaster or emergency remediation work shall provide to the state agencies a statement that the business is in this state for the sole purpose of responding to the disaster or emergency. The statement must include the business name, out-of-state business name if applicable, state of domicile, principal business address, federal tax identification number, date of entry into this state, and contact information, including the out-of-state business's tax matters person. An out-of-state business shall provide proof that its workers have workers' compensation insurance to workforce safety and insurance.
2. A registered business in this state shall provide the information required in subsection 1 for any out-of-state affiliate that enters this state.
3. Each state agency may develop procedures and issue forms or online processes to carry out these administrative procedures and maintain and make available a record of any designations made by an out-of-state business or out-of-state employee pursuant to this chapter.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 249

SENATE BILL NO. 2183

(Senators Sorvaag, Campbell, Dever)
(Representatives M. Johnson, Kading, Kasper)

AN ACT to create and enact a new section to chapter 37-18 of the North Dakota Century Code, relating to the conferment of a veterans commemorative memorial coin; to provide a statement of legislative intent; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-18 of the North Dakota Century Code is created and enacted as follows:

Commemorative memorial coin - Eligibility.

1. The department of veterans' affairs shall create and confer a commemorative memorial coin upon a family member of a deceased North Dakota veteran during military funeral honors for that veteran if the deceased veteran:
 - a. Served on active duty, in the national guard, or in the selected reserve and departed the armed forces or national guard under conditions other than dishonorable;
 - b. Completed at least one term of enlistment or period of initial obligated service in the selected reserve and departed under conditions other than dishonorable or was discharged from the selected reserve due to a disability incurred or aggravated in the line of duty;
 - c. Died while serving on active duty, in the national guard, or in the selected reserve; or
 - d. Was a member of the commissioned officer corps of the public health service, the national oceanic and atmospheric administration, or a civilian or contractual group of individuals given active duty service determinations and considered a veteran under Public Law No. 95-202.
2. A family member of a deceased North Dakota veteran may purchase a commemorative memorial coin from the department of veterans' affairs at a cost determined by the department.
3. As used in this section:
 - a. "Family member" means a spouse, parent, child, or other individual related by blood.
 - b. "North Dakota veteran" means an individual who meets the requirements of subsection 1 and who was a resident of North Dakota during any period of the individual's life.

4. Under section 37-18-12, the department may expend any gifts, grants, or donations received for the creation and conferment of commemorative memorial coins.

SECTION 2. LEGISLATIVE INTENT - COMMEMORATIVE MEMORIAL COINS.

It is the intent of the sixty-fifth legislative assembly that the administrative committee on veterans' affairs consider providing funding from the veterans' postwar trust fund to the department of veterans' affairs for the purpose of funding at least four thousand commemorative memorial coins for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 3. RETROACTIVE APPLICATION. Subsection 2 of Section 1 of this Act applies to all family members of a deceased North Dakota veteran, regardless of the date of death of the veteran.

Approved April 19, 2017

Filed April 20, 2017

MINING AND GAS AND OIL PRODUCTION

CHAPTER 250

HOUSE BILL NO. 1151

(Representatives Streytle, Dockter, Lefor)
(Senators O. Larsen, Schaible, Unruh)

AN ACT to amend and reenact section 38-08-04 of the North Dakota Century Code, relating to the reporting of well pad or oil and gas production facility fluid spills.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04. Jurisdiction of commission.

1. The commission has continuing jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission. The commission has the authority:
 4. a. To require:
 - a- (1) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.
 - b- (2) The making and filing with the industrial commission of all resistivity, radioactivity, and mechanical well logs and the filing of directional surveys, if taken, and the filing of reports on well location, drilling, and production.
 - e- (3) The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, the pollution of freshwater supplies by oil, gas, or saltwater, and to prevent blowouts, cavings, seepages, and fires.
 - d- (4) The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission, including without limitation a bond covering the operation of any underground gathering pipeline transferring oil or produced water from a production facility for disposal, storage, or sale purposes, except that if the commission

requires a bond to be furnished, the person required to furnish the bond may elect to deposit under such terms and conditions as the industrial commission may prescribe a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

- e- (5) That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the commission.
- f. (6) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.
- g- (7) Certificates of clearance in connection with the transportation or delivery of oil, gas, or any product.
- h- (8) Metering or other measuring of oil, gas, or product related to production in pipelines, gathering systems, storage tanks, barge terminals, loading racks, refineries, or other places, by meters or other measuring devices approved by the commission.
- i. (9) Every person who produces, sells, purchases, acquires, stores, transports, refines, disposes of, or processes oil, gas, saltwater, or other related oilfield fluids in this state to keep and maintain within this state complete and accurate records of the quantities thereof, which records must be available for examination by the commission or its agents at all reasonable times, and to file with the commission reports as the commission may prescribe with respect to oil or gas or the products thereof. An oil and gas production report need not be notarized but must be signed by the person submitting the report.
- j- (10) The payment of fees for services performed. The amount of the fee shall be set by the commission based on the anticipated actual cost of the service rendered. Unless otherwise provided by statute, all fees collected by the commission must be deposited in the general fund of this state, according to procedures established by the state treasurer.
- k- (11) The filing free of charge of samples and core chips and of complete cores when requested in the office of the state geologist within six months after the completion or abandonment of the well.
- l. (12) The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. If none of the three preceding conditions are met, the industrial commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations. After a well has been in abandoned-well status for one year, the well's equipment, all well-related equipment at the well site, and salable oil at

the well site are subject to forfeiture by the commission. If the commission exercises this authority, section 38-08-04.9 applies. After a well has been in abandoned-well status for one year, the single-well bond referred to above, or any other bond covering the well if the single-well bond has not been obtained, is subject to forfeiture by the commission. A surface owner may request a review of the temporarily abandoned status of a well that has been on temporarily abandoned status for at least seven years. The commission shall require notice and hearing to review the temporarily abandoned status. After notice and hearing, the surface owner may request a review of the temporarily abandoned status every two years.

2. b. To regulate:
 - a. (1) The drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.
 - b. (2) The shooting and chemical treatment of wells.
 - c. (3) The spacing of wells.
 - d. (4) Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations.
 - e. (5) Disposal of saltwater and oilfield wastes.
 - (1) (a) The commission shall give all affected counties written notice of hearings in such matters at least fifteen days before the hearing.
 - (2) (b) The commission may consider, in addition to other authority granted under this section, safety of the location and road access to saltwater disposal wells, treating plants, and all associated facilities.
 - f. (6) The underground storage of oil or gas.
3. c. To limit and to allocate the production of oil and gas from any field, pool, or area and to establish and define as separate marketing districts those contiguous areas within the state which supply oil and gas to different markets, and to limit and allocate the production of oil and gas for each separate marketing district.
4. d. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells as defined in section 57-51.1-01 and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations as defined in section 57-51.1-01, and the date of qualification for the oil extraction tax exemption for secondary and tertiary recovery operations.

- 5- e. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and the commission's responsibilities under chapter 57-51.1. When adopting a rule, issuing an order, or creating a policy, the commission shall give due consideration to the effect of including locations within this state which may also be under the jurisdiction of the federal government or a tribal government. When reporting information resulting from adopting a rule, issuing an order, or creating a policy that affects locations within this state which may also be under the jurisdiction of the federal government or a tribal government, the commission shall provide sufficient information to indicate the effect of including locations that may also be under the regulatory jurisdiction of the federal government or a tribal government.
- 6- f. To provide for the confidentiality of well data reported to the commission if requested in writing by those reporting the data for a period not to exceed six months. However, the commission may release:
 - a- (1) Volumes injected into a saltwater injection well.
 - b- (2) Information from the spill report on a well on a site at which more than ten barrels of fluid, not contained on the well site, was released for which an oilfield environmental incident report is required by law.
2. A person controlling or operating a well, pipeline, receiving tank, storage tank, treating plant, or other receptacle or production facility associated with oil and gas, or with water production, injection, processing, or well servicing, shall report to the commission any leak, spill, or release of fluid. A report to the commission is not required if the leak, spill, or release is crude oil, produced water, or natural gas liquids in a quantity of less than ten barrels cumulative over a fifteen-day time period, remains on the site or facility, and is on a well site where the well was spud after September 1, 2000, or on a facility, other than a well site, constructed after September 1, 2000.
3. Any written violation notice issued by the commission regarding the notification of a fire, leak, spill, blowout, or leak and spill cleanup must be placed in the well file or facility file and the files must be available for review by the surface owner.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 251

HOUSE BILL NO. 1347

(Representatives D. Anderson, Boschee, C. Johnson, Mock, M. Nelson, Schmidt, Steiner)
(Senators Armstrong, Bekkedahl, Unruh, Vedaa)

AN ACT to amend and reenact section 38-08-04.5 of the North Dakota Century Code, relating to the abandoned oil and gas well plugging and site reclamation fund; to provide an appropriation; and to provide a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹¹ **SECTION 1. AMENDMENT.** Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Continuing appropriation - Budget section report.

There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
 - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
 - b. Moneys received from the forfeiture of drilling and reclamation bonds.
 - c. Moneys received from any federal agency for the purpose of this section.
 - d. Moneys donated to the commission for the purposes of this section.
 - e. Moneys received from the state's oil and gas impact fund.
 - f. Moneys recovered under the provisions of section 38-08-04.8.
 - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
 - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
 - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
 - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:

¹¹¹ Section 38-08-04.5 was also amended by section 33 of Senate Bill No. 2327, chapter 199.

- a. Contracting for the plugging of abandoned wells.
 - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
 - c. To pay mineral owners their royalty share in confiscated oil.
 - d. Defraying costs incurred under section 38-08-04.4 in reclamation of oil and gas-related pipelines and associated facilities.
 - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to ~~one~~five million ~~five-hundred thousand~~ dollars per biennium from the fund in the following priority:
 - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
 - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
 - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.
 - (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
 - f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the state department of health for the purposes provided under chapter 23-31, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the state department of health shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
 4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

SECTION 2. APPROPRIATION - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND - ONE-TIME FUNDING - EXEMPTION - BRINE POND AND SOIL REMEDIATION STUDIES - REPORT TO LEGISLATIVE MANAGEMENT.

1. Notwithstanding section 38-08-04.5, there is appropriated out of any moneys in the abandoned oil and gas well plugging and site reclamation 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 industrial commission for the purpose of conducting brine pond and soil remediation studies, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item. The industrial commission shall conduct the following studies, during the biennium beginning July 1, 2017, and ending June 30, 2019:
 - a. A study of the number of brine ponds in the north central portion of this state which were active between 1951 and 1984 and which require the remediation of salt and any other contamination from the surrounding soil. The industrial commission may contract with or cooperate with research facilities in this state to conduct the study.
 - b. A study of the number of brine ponds in the north central portion of this state which were active between 1951 and 1984 and for which landowners received compensation due to contamination to the surrounding soil.
 - c. A study of the best techniques for remediating salt and any other contamination from the soil surrounding brine ponds in the north central portion of this state which were active between 1951 and 1984 as a continuation of the study conducted pursuant to section 9 of chapter 254 of the 2015 Session Laws.
 - d. A study of the best techniques for remediating soil compaction due to oil and gas operations on well and facility sites in this state. The industrial commission may contract with or cooperate with research facilities in this state to conduct the study.
 - e. A pilot project to study and to test the best techniques for remediating salt and any other contamination from the soil surrounding brine ponds in the north central portion of this state which were active between 1951 and 1984. The industrial commission may contract with or cooperate with research facilities in this state to conduct the study.
2. The industrial commission shall provide a report to the energy development and transmission committee by September 30, 2018, regarding the results of the studies conducted under this section.

SECTION 3. OIL AND GAS RESEARCH FUND - CONTINUATION OF PIPELINE LEAK DETECTION STUDY - EXEMPTION - REPORT TO THE LEGISLATIVE MANAGEMENT. The industrial commission shall use \$500,000, or so much of the sum as may be necessary, from the oil and gas research fund to contract with the energy and environmental research center to continue a study regarding pipeline leak detection technology, for the biennium beginning July 1, 2017, and ending June 30, 2019. The study must include an analysis of leak detection and monitoring technology and a risk assessment of new and existing pipeline systems. Notwithstanding any oil and gas research program policies, the contract does not require matching funds. The energy and environmental research center shall provide a report to the industrial

commission and the legislative management by September 30, 2018, regarding the results and recommendations of the study.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 252

SENATE BILL NO. 2333

(Senators Rust, Wanzek)

(Representatives B. Anderson, D. Anderson, Longmuir, Mock)

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to reclamation requirements for land disturbed by oil and gas activity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is created and enacted as follows:

Reclamation of land disturbed by oil and gas activity.

1. Any land disturbed by construction of well sites, treating plants, saltwater handling facilities, access roads, underground gathering pipelines and associated facilities, and from remediation of leaks or spills within the jurisdiction of the commission shall be reclaimed as close as practicable to its original condition as it existed before the construction of the well site or other disturbance. The commission, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged or treating plant or saltwater handling facility is decommissioned. The commission shall record documentation of the waiver with the recorder of the county in which the site or road is located.
2. This section may not be construed to require removal of a properly reclaimed reserve pit or a properly abandoned underground gathering pipeline.
3. A person may not bring a legal proceeding under this section, unless the person has exhausted all administrative remedies.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 253

HOUSE BILL NO. 1257

(Representatives Steiner, Kempenich, J. Nelson, Schneider, Vetter, Zubke)
(Senators Bekkedahl, Campbell)

AN ACT to amend and reenact subsection 7 of section 38-08-09.4 and sections 38-08-09.5 and 38-08-09.9 of the North Dakota Century Code, relating to approval requirements for unitization plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 38-08-09.4 of the North Dakota Century Code is amended and reenacted as follows:

7. The time when and conditions under which and the method by which the unit must or may be dissolved and its affairs wound up; however, the unit may be dissolved ten years after the unit agreement becomes effective upon a petition to the commission by the royalty owners who are credited with at least ~~eighty~~ percent of the production and proceeds thereof or for units established after August 1, 2001, upon a petition to the commission by the royalty owners who are credited with at least ~~sixty~~ percent of the production and proceeds thereof the percentage of interest of the royalty production and proceeds thereof required to ratify the unit agreement on the date the unit agreement was initially approved by the commission, and a subsequent hearing and order by the commission. The commission may not dissolve any unit if the dissolution would be likely to result in waste or the violation of the correlative rights of any owner. This provision does not limit or restrict any other authority which the commission has.

SECTION 2. AMENDMENT. Section 38-08-09.5 of the North Dakota Century Code is amended and reenacted as follows:

38-08-09.5. Ratification or approval of plan by lessees and owners.

At the time of filing of the petition for the approval of a unit agreement and the filing of the unit agreement, the commission shall schedule a hearing. At least forty-five days prior to the hearing, the applicant shall give notice of the hearing and shall mail, postage prepaid, a copy of the application and the proposed plan of unitization to each affected person owning an interest of record in the unit outline, at such person's last-known post-office address. In addition, the applicant shall file with the commission engineering, geological, and all other technical exhibits to be used at the hearing, and further, the notice must specify that such material is filed and is available for inspection. Service is complete in the mailing of the notice of hearing and unit agreement to each interest owner as described in this section and the filing of an affidavit of mailing with the commission. No order of the commission creating a unit and prescribing its plan of unitization becomes effective until the plan of unitization has been signed, or in writing ratified or approved by those persons who, under the commission's order, will be required to pay ~~at least sixty~~ more than fifty-five percent of the costs of the unit operation and by the owners of ~~at least sixty~~ more than fifty-five percent of the royalty interests, excluding overriding royalties, production payments, and other interests carved out of the working interest, and in addition it is required

that when there is more than one person who will be obligated to pay costs of the unit operation, at least two nonaffiliated such persons and at least two royalty interest owners, are required as voluntary parties, and the commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest. If the plan of unitization has not been signed, ratified, or approved by lessees and royalty owners owning the required percentage interest at the time the order creating the unit is made, the commission shall, upon petition and notice, hold such additional hearings as may be requested or required to determine if and when the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest and shall, in respect to such hearings, enter a finding of its determination in such regard. In the event lessees and royalty owners, or either, owning the required percentage interest have not signed, ratified, or approved the plan of unitization within six months from the date on which the order creating the unit is made, the order ceases to be of further force and effect and shall be revoked by the commission.

SECTION 3. AMENDMENT. Section 38-08-09.9 of the North Dakota Century Code is amended and reenacted as follows:

38-08-09.9. Enlargement of area - Creation of new units - Amendment of plan.

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

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 254

HOUSE BILL NO. 1409

(Representative M. Nelson)

AN ACT to amend and reenact section 38-11.2-07 of the North Dakota Century Code, relating to well water testing preceding subsurface mineral production and liability for damages to water supplies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-11.2-07 of the North Dakota Century Code is amended and reenacted as follows:

38-11.2-07. Protection of surface and ground water - Other responsibilities of mineral developer.

1. The mineral developer shall conduct or have conducted an inventory of water wells located within one-half mile [804.67 meters] of where subsurface mineral exploration activities are conducted, if such exploration activities appear reasonably likely to encounter ground water, or within one mile [1.61 kilometers] of a subsurface mineral production site.
2. The mineral developer shall conduct or have conducted a certified water quality and quantity test within one year preceding the commencement of subsurface mineral production operations on each water well or water supply located on the involved real property and as identified by the surface owner of that real property. Results of water quality tests conducted under this subsection must be reported in a prescribed format to the state department of health, which shall maintain a database of the results. The water quality test must be collected as prescribed by the department of health and analyzed by a state-certified laboratory.
3. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where subsurface mineral exploration activities are or have been conducted or within one mile [1.61 kilometers] of a subsurface mineral production site has been disrupted, or diminished in quality or quantity by the drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations.
4. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer.
5. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or

disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section, or by showing the mineral developer did not conduct or have conducted the testing required under subsection 2.

6. If a person refuses to consent to the testing of a water well or water supply on land owned by the person, as required under subsection 2, the person forfeits any claim for relief under subsection 3 or 4.
7. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.
- ~~7-8.~~ A tract of land is not bound to receive water contaminated by drilling operations on another tract of land and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.
- ~~8-9.~~ The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations.
- ~~9-10.~~ This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

Approved March 22, 2017

Filed March 23, 2017

MOTOR VEHICLES

CHAPTER 255

HOUSE BILL NO. 1105

(Political Subdivisions Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact subsection 2 of section 39-01-01 of the North Dakota Century Code, relating to the definitions of emergency vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹² **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 and other vehicles authorized by licensure granted under chapter 23-27.
 - (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.

¹¹² Section 39-01-01 was also amended by section 1 of House Bill No. 1128, chapter 256.

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- (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.
 - (12) Vehicles operated by or under the control of the state department of health in cases of emergencies.
- 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 used by the state division of homeland security or local division of emergency management organizations.
 - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
 - (3) Vehicles, other than ambulances, used by emergency medical services personnel.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 256

HOUSE BILL NO. 1128

(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 39-06-14.2 of the North Dakota Century Code, relating to the definition of primary source identity document and driver's license central identity management; and to amend and reenact sections 39-06-01, 39-06-03.1, 39-06-07.1, and 39-06-18, subsection 5 of section 39-06-19, and sections 39-06-20 and 39-06.2-08 of the North Dakota Century Code, relating to operator's license and nondriver identification card criteria, license renewals, notice of change of address or name, and the application for commercial driver's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹³ **SECTION 1.** A new subsection to section 39-01-01 of the North Dakota Century Code is created and enacted as follows:

"Primary source identity document" means documentary evidence of an individual's name, date of birth, and legal presence required in chapters 39-06 and 39-06.2 related to the issuance of permits, licenses, and nondriver photo identification cards, and retained in the driver record.

SECTION 2. AMENDMENT. Section 39-06-01 of the North Dakota Century Code is amended and reenacted as follows:

39-06-01. Operators must be licensed - Additional licensing - Penalty.

1. An individual, unless 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 individual has a valid license as an operator under this chapter or a temporary operator's permit issued under chapter 39-20. An individual may not receive an operator's license ~~unless and/or a nondriver identification card~~ until that individual surrenders to the director all operator's licenses and, permits, and ~~nondriver photo identification cards~~ issued to that individual by any ~~jurisdictionstate or country~~. If a license issued by another ~~jurisdictionstate~~ is surrendered, the director shall notify the issuing ~~jurisdictionstate~~ of the surrender. An individual may ~~not have more than one be issued either a valid operator's license or a nondriver identification card~~ at any one time, ~~but not both~~.
2. An individual licensed as an operator may exercise the privilege granted by the license on any highway in this state and may not be required to obtain any other license to exercise the privilege by any political subdivision having authority to adopt police regulations, except that municipalities may regulate occupations and may regulate the operation of taxicabs under subsection 27 of section 40-05-01.

¹¹³ Section 39-01-01 was also amended by section 1 of House Bill No. 1105, chapter 255.

¹¹⁴ **SECTION 3. AMENDMENT.** Section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-03.1. Nondriver photo identification card issued by director - Release of information - Penalty - Public awareness.

1. The director shall issue a nondriver color photo identification card to any resident of this state 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 director may not withhold the issuance of a nondriver color photo identification card without reasonable cause. If the applicant 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 section 39-06-19, identification cards expire eight years from the date of issue and may be renewed. The application must contain other information as the director may require to improve identity security.
2. To confirm the identity, date of birth, and legal presence of the applicant, the director or examining officer shall require satisfactory evidence be provided by the applicant. Satisfactory evidence includes a certified copy of the applicant's birth certificate or other evidence reasonably calculated to permit the determination of the date of birth, identification, and legal presence of the applicant by the director or examining officer. The director may require an applicant for an identification card to provide a social security card and proof of residence address.
3. The application fee is listed in section 39-06-49. Except for a duplicate or replacement card or a card under subsection 7, the director may not charge a fee to provide a nondriver photo identification card to an eligible applicant.
4. Any information obtained by the director from an applicant for the issuance, renewal, or replacement of an identification card may not be released unless allowed under section 39-16-03.
5. The director may advertise the availability and the use of the card.
6. Identification cards issued under this section are sufficient identification for all identification purposes.
7. ~~An individual who possesses a driver's license may obtain a nondriver photo identification card.~~

¹¹⁵ **SECTION 4. AMENDMENT.** Section 39-06-07.1 of the North Dakota Century Code is amended and reenacted as follows:

¹¹⁴ Section 39-06-03.1 was also amended by section 10 of House Bill No. 1369, chapter 152.

¹¹⁵ Section 39-06-07.1 was also amended by section 11 of House Bill No. 1369, chapter 152.

39-06-07.1. Proof of name, date of birth, and legal presence for operator's license application - Primary source identity documents.

1. An applicant must verify the applicant's name, date of birth, and legal presence on any application by a certified birth certificate or any other documentary evidence that confirms to the satisfaction of the director the true identity, date of birth, and legal presence of the applicant.
2. Primary source identity documents retained by the department are not public records.

SECTION 5. Section 39-06-14.2 of the North Dakota Century Code is created and enacted as follows:

39-06-14.2. Driver license central identity management.

1. The director shall provide central identity management for all state agencies for citizens who possess a nondriver photo identification card or driver's license utilizing driver record data.
2. The director will provide access for identity verification. The director may not allow entities to transfer or collect identification data from the driver's license database, but shall create processes and procedures that enable verification of data without direct release of the data, except as authorized in chapter 39-33.
3. The director shall develop procedures to comply with this section.

SECTION 6. AMENDMENT. Section 39-06-18 of the North Dakota Century Code is amended and reenacted as follows:

39-06-18. Substitute operator's license.

If an operator's license or nondriver photo identification card issued under this chapter is lost, mutilated, or destroyed, or contains erroneous information due to a change in name, address, or for any other reason, the individual to whom the operator's license or identification card was issued may obtain a substitute, by furnishing proof satisfactory to the director that the operator's license or identification card has been lost, mutilated, or destroyed, or is erroneous, providing documentation that confirms to the satisfaction of the director the true identity, date of birth, and legal presence of the applicant and provide a social security card or other satisfactory evidence of a social security number and proof of residence address, if not previously completed or if there are changes to the information already on file, and upon payment of a fee listed in section 39-06-49. If an individual has a name change, the individual shall obtain a substitute license or identification card with the correct name.

¹¹⁶ **SECTION 7. AMENDMENT.** Subsection 5 of section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

5. An applicant for renewal must present the application with the fee for renewal of license to the director not before ten months ~~before~~prior to the expiration date of the operator's license. The director may require an examination of an applicant as upon an original application. The director may require an applicant for renewal or a substitute to provide ~~a social security card and proof~~

¹¹⁶ Section 39-06-19 was also amended by section 1 of House Bill No. 1299, chapter 264.

~~of residence address documentation that confirms to the satisfaction of the director the true identity, date of birth, and legal presence of the applicant and provide a social security card or other satisfactory evidence of a social security number and proof of residence address, if not previously completed or if there are changes to the information already on file.~~ 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.

SECTION 8. AMENDMENT. Section 39-06-20 of the North Dakota Century Code is amended and reenacted as follows:

39-06-20. Notice of change of address or name.

If an individual after applying for or receiving an operator's license or identification card moves from the address named in ~~the application or~~ on the license or identification card, or if the name of a licensee is changed by marriage or otherwise, that individual within ten days after moving or the name change shall notify the director in writing or in person of that individual's old and new addresses or of the individual's former and new names and of the number of any operator's license or identification card then held by that person. An individual may obtain a corrected operator's license or identification card for address only changes, but must obtain a new operator's license or identification card for a name change. by making an application as provided for in section 39-06-18. The department may change the address based on information received from any authorized address correction service of the United States postal service. The department may also develop procedures for receiving notification of address changes by telephone ~~or~~ electronic means.

SECTION 9. AMENDMENT. Section 39-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-08. Application for commercial driver's license.

1. The application for a commercial driver's license or commercial learner's permit must include the following:
 - a. The full name and current residence and 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 nondomiciled 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;
 - g. Any other information required by the director; and
 - h. A consent to release driving record information.

2. The application must be accompanied by an application fee listed in section 39-06.2-19. The application must contain any other information as the director may require to improve identity security. The director ~~may~~shall require an applicant for a commercial license or commercial learner's permit to provide a ~~social security card and proof of residence address~~documentary evidence that confirms to the satisfaction of the director the true identity, date of birth, and legal presence of the applicant and provide a social security card or other satisfactory evidence of a social security number and proof of residence address, if not previously provided or if there are changes to the information already on file.
3. When the holder of a commercial driver's license changes the holder's name or ~~mailing~~residence address, an application for a ~~duplicate~~substitute license must be made under section 39-06-18.
4. Any individual who knowingly falsifies information or certifications required under subsection 1 is subject to suspension, revocation, 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 3, 2017

Filed April 4, 2017

CHAPTER 257

HOUSE BILL NO. 1211

(Representatives Boschee, Rick C. Becker, Dobervich, Guggisberg, Jones, M. Nelson, O'Brien)
(Senators Campbell, Clemens, Laffen, Nelson)

AN ACT to amend and reenact section 39-01-15 and subsection 1 of section 39-06.1-06 of the North Dakota Century Code, relating to parking spaces for mobility-impaired individuals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁷ **SECTION 1. AMENDMENT.** Section 39-01-15 of the North Dakota Century Code is amended and reenacted as follows:

39-01-15. Parking privileges for mobility impaired - Certificate - Revocation - Continuing appropriation - Penalty.

1. ~~Any~~^A mobility-impaired individual who displays prominently upon an ~~automobile~~^{a motor vehicle} parked by that individual or under that individual's direction and for that individual's use, the distinguishing certificate specified in subsection 4, license plates issued under section 39-04-10.2, or a disabled veteran plate issued under subdivision j of subsection 2 of section 39-04-18 is entitled to courtesy in the parking of the ~~automobile~~^{motor vehicle}. However, any municipality may prohibit, by ordinance, parking on any highway for the purpose of creating a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours. The privileges extended to a mobility-impaired individual do not apply on a highway if parking is prohibited.
2. A mobility-impaired individual as used in this section includes an individual who uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet [60.96 meters] without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred feet [60.96 meters] without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American heart association; has an orthopedic, neurologic, or other medical condition that makes it impossible for the person to walk two hundred feet [60.96 meters] without assistance or rest; or is a disabled veteran issued a plate under subdivision j of subsection 2 of section 39-04-18.
3. Repealed by S.L. 1989, ch. 319, § 6.
4. The director may issue, for a fee of three dollars per year or part of a year, a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written or electronic statement issued by a qualified physician, physician assistant,

¹¹⁷ Section 39-01-15 was also amended by section 1 of House Bill No. 1135, chapter 335.

chiropractor, or an advanced practice registered nurse to the director that the applicant is a mobility-impaired person within the criteria of subsection 2. The director shall waive the requirement for a written or electronic statement from a qualified physician, physician assistant, chiropractor, or an advanced practice registered nurse if the applicant has previously submitted an application containing a certification from a qualified physician, physician assistant, chiropractor, or an advanced practice registered nurse that the applicant's impairment is not reversible. The application must include the information required by the director. The physician's, physician assistant's, chiropractor's, or advanced practice registered nurse's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the director. A physician, physician assistant, chiropractor, or an advanced practice registered nurse who provides a false statement that an individual is mobility impaired for the purpose of that individual obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be nine and one-half inches [24.13 centimeters] in height and three inches [7.62 centimeters] in width and must bear, in white on blue, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the director for a fee of three dollars upon application supported by a physician's, physician assistant's, chiropractor's, or an advanced practice registered nurse's statement. The director may issue a maximum of one additional temporary certificate for a fee of three dollars. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's, physician assistant's, chiropractor's, or an advanced practice registered nurse's statement that the extension is warranted. Temporary certificates must be the same size as other certificates issued under this section and must be white on red. The director may issue a maximum of one additional certificate, if the applicant does not have number plates issued under section 39-04-10.2 or under subdivision j of subsection 2 of section 39-04-18, for a fee of six dollars per certificate, to a mobility-impaired individual to whom a certificate has been issued under this subsection. The additional certificates may only be used by or on behalf of the mobility-impaired individual.

5. Except as provided in this subsection, two dollars of each fee for issuance of a certificate and one dollar of each fee for issuance of an additional certificate under this section must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate. The rest of the fee, and the five dollar fee received for the issuance of an additional certificate under subsection 4, must be deposited in the state treasury and credited to the employment of people with disabilities fund. The fees deposited in the fund are hereby appropriated on a continuing basis to the department of human services for use by the committee on employment of people with disabilities to accomplish the committee's statutory duties provided under section 50-06.1-16. If a certificate is lost, mutilated, or destroyed, the individual to whom the certificate was issued is entitled to a replacement. The individual shall furnish proof satisfactory to the director that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.

6. A certificate issued under this section must be hung from the rearview mirror of the motor vehicle whenever the vehicle is occupying a space reserved for the mobility impaired and is being used by a mobility-impaired individual or another individual for the purposes of transporting the mobility-impaired individual. No part of the certificate may be obscured. A fee of five dollars may be imposed for a violation of this subsection.
7. An applicant may appeal a decision denying issuance of the certificate to the director. Written notice of the appeal must be received within ten business days following receipt by the applicant of notice of denial. The applicant has sixty days to provide additional supportive material to the director for purposes of deciding the appeal. The director shall affirm or reverse the decision to deny issuance of the certificate within thirty days after receipt of the supportive material. Written notice of the decision must be given to the applicant.
8. If a law enforcement officer finds that the certificate is being improperly used, the officer may report to the director any violation and the director may, in the director's discretion, remove the privilege. An individual who is not mobility impaired and who exercises the privileges granted a mobility-impaired individual under subsection 1 is guilty of an infraction for which a fine of one hundred dollars must be imposed.
9. If a public or private entity designates parking spaces for use by a motor vehicle operated by a mobility-impaired individual, those reserved spaces must comply with the requirements of the Americans with Disabilities Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36] and must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, each reserved space must be indicated by an official sign approved by the director bearing the internationally accepted symbol of access for the mobility impaired. The sign must indicate that unauthorized use of the space is a nonmoving violation for which a fee of one hundred dollars must be imposed. For particular events, a public or a private entity may reserve additional parking spaces for use by motor vehicles operated by a mobility-impaired individual. In that case, each temporarily reserved space must be indicated by a sign or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.
10. If the designated mobility-impaired parking spaces are occupied or unavailable, a motor vehicle displaying the distinguishing certificate specified in subsection 4, license plates issued under section 39-04-10.2, or a disabled veteran plate issued under subdivision j of subsection 2 of section 39-04-18 may park at an angle and occupy two standard parking spaces.
- ~~10-11.~~ 11. An individual may not stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility-impaired identification certificate issued by the director to a mobility-impaired individual. A mobility-impaired individual may not permit the use of a certificate issued under this section by an individual who is not

mobility impaired when that use is not in connection with the transport of the mobility-impaired individual. The registered owner of a vehicle may not allow that vehicle to be used in a manner that violates this subsection. Proof of intent is not required to prove a registered owner's violation of this subsection. The registered owner, however, may be excused from a violation if the owner provides the citing authority with the name and address of the individual operating the vehicle at the time of the violation. A vehicle may temporarily use a space reserved for a mobility-impaired individual without a mobility-impaired certificate for the purpose of loading and unloading a mobility-impaired individual. A violation of this subsection is a nonmoving violation for which a fee of one hundred dollars must be imposed. Notwithstanding section 29-27-02.1, fifty percent of the fee imposed and collected under this subsection is appropriated on a continuing basis to the local committee on persons with disabilities, if one exists in the city in which the violation occurred, for the development of job opportunities for disabled individuals in the community.

~~41-12.~~ Any motor vehicle licensed in another state which displays a special authorized vehicle designation issued by the licensing authority of that state for vehicles used in the transportation of a mobility-impaired individual must be accorded the same privilege provided in this section for similar vehicles licensed in this state if the laws of the other state provide the same privileges to North Dakota motor vehicles displaying the special identifying certificate authorized in this section.

~~42-13.~~ An entity that violates the requirements of subsection 9 is guilty of an infraction if the entity does not comply with subsection 9 within sixty days after receiving official notification of the violation.

~~43-14.~~ The department shall issue a mobility-impaired parking permit for a vehicle owned and operated by care providers licensed by the state, veterans-related organizations, and other entities that regularly transport mobility-impaired individuals for use by those providers and entities to park in designated parking spaces while transporting mobility-impaired individuals.

¹¹⁸ **SECTION 2. AMENDMENT.** Subsection 1 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee of twenty dollars except for a violation of any traffic parking regulation on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars, excluding a violation of subsection ~~40~~11 of section 39-01-15.

Disapproved March 22, 2017

Filed March 22, 2017

¹¹⁸ Section 39-06.1-06 was also amended by section 1 of House Bill No. 1311, chapter 266, and section 1 of House Bill No. 1430, chapter 269.

CHAPTER 258

SENATE BILL NO. 2097

(Government and Veterans Affairs Committee)
(At the request of the Highway Patrol)

AN ACT to create and enact a new subsection to section 39-03-09 of the North Dakota Century Code, relating to the powers of the highway patrol to promote public trust; to amend and reenact section 39-03-05, subsection 3 of section 39-12-02, and subsection 2 of section 62.1-02-05 of the North Dakota Century Code, relating to the contents of badges issued to patrolmen, interstate permits, and public security personnel possessing dangerous weapons; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03-05 of the North Dakota Century Code is amended and reenacted as follows:

39-03-05. Badge issued to patrolmen - Contents of badge.

The superintendent shall issue to each patrolman a badge of authority with the seal of this state in the center thereof. The term "North Dakota highway patrol" must encircle such seal and ~~below~~^{above} the same must appear the designation of the position held by the person to whom such badge is issued. Each such badge must contain a ~~serial~~^{unit} number, ~~or each patrolman shall display otherwise a distinctive serial number or symbol of rank.~~ No badge may be issued to any person who is not a duly appointed and acting member of the highway patrol.

SECTION 2. A new subsection to section 39-03-09 of the North Dakota Century Code is created and enacted as follows:

To promote public trust and an understanding of law enforcement through education, community outreach, and job shadowing programs.

¹¹⁹ **SECTION 3. 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. 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:

¹¹⁹ Section 39-12-02 was also amended by section 1 of House Bill No. 1288, chapter 270, section 1 of House Bill No. 1320, chapter 271, and section 9 of Senate Bill No. 2011, chapter 36.

- 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~~an 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.
- 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 fishhouse trailer being moved by the owner, then the fee is twenty dollars per calendar year.
- j. 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.

¹²⁰ **SECTION 4. AMENDMENT.** Subsection 2 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

2. This section does not apply to:
 - a. A law enforcement officer;
 - b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
 - c. A competitor participating in an organized sport shooting event;
 - d. A gun or antique show;

¹²⁰ Section 62.1-02-05 was also amended by section 1 of House Bill No. 1279, chapter 430, section 1 of House Bill No. 1233, chapter 433, section 1 of House Bill No. 1273, chapter 429, section 3 of House Bill No. 1395, chapter 428, and section 1 of Senate Bill No. 2125, chapter 431.

- e. A participant using a blank cartridge firearm at a sporting or theatrical event;
- f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
- g. A student and an instructor at a hunter safety class;
- h. Private and public security personnel while on duty;
- i. A state or federal park;
- j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;
- k. An individual in a publicly owned or operated rest area or restroom;
- l. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual; and
- m. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 259

HOUSE BILL NO. 1359

(Representatives Mitskog, Damschen, Headland, Monson, Owens)
(Senators Armstrong, Dotzenrod, D. Larson, Nelson)

AN ACT to create and enact a new section to chapter 39-03 of the North Dakota Century Code, relating to disabled and vulnerable elderly adults and minors who have developmental disabilities who are reported missing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-03 of the North Dakota Century Code is created and enacted as follows:

Silver alert notice system.

The superintendent, in cooperation with the bureau of criminal investigation and the division of state radio of the department of emergency services, shall establish a silver alert notice system to activate an urgent bulletin using the emergency alert system to air a description of a disabled adult or vulnerable elderly adult as defined in section 12.1-31-07 or a minor who has a developmental disability as defined in section 25-01.2-01, who has been reported to law enforcement as missing and to aid in the location of that individual.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 260

HOUSE BILL NO. 1159

(Representatives Beadle, Boehning)
(Senator Casper)

AN ACT to amend and reenact section 39-04-11 of the North Dakota Century Code, relating to clearly displaying letters and numbers on motor vehicle plates and the display of number plates on a motorcycle or trailer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-11 of the North Dakota Century Code is amended and reenacted as follows:

39-04-11. Display of number plates and tabs.

~~Except as~~Unless otherwise specifically provided by law, ~~a person~~an individual may not operate or drive a vehicle on ~~the~~ the public ~~highway~~highway of this state unless the vehicle has a distinctive number assigned to ~~it~~ the vehicle by the department, and two number plates, bearing the distinctive number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of the vehicle, each securely fastened, except number plates assigned to a ~~motorcycle, trailer, or~~housetrailer must be attached to the rear ~~thereof~~ of the housetrailer. Number plates assigned to a motorcycle or trailer must be attached to the rear of the motorcycle or trailer and may be displayed vertically. When only one number plate is furnished for an apportioned vehicle ~~licensed~~registered under the international registration plan as authorized in section 39-19-04, truck tractor, or semitrailer, the plate must be attached to the front of the apportioned vehicle or truck tractor and the rear of the semitrailer. The bottom of each number plate must be at a height of not less than twelve inches [30.48 centimeters] above the level surface upon which the vehicle stands. Each plate must be mounted in a visible manner that ~~does not cover any words, letter, or number~~clearly displays the distinctive number assigned to the vehicle and the name of the state on the plate. As far as is reasonably possible, the plates must at all times be kept free and clear of mud, ice, or snow so as to be clearly visible and all number plates, markers, or evidence of registration or licensing except for the current year must be removed from the vehicle. All vehicle license plates issued by the department ~~continue to be~~are the property of the ~~state of North Dakota~~department for the period for which the plates are valid. An annual registration tab or sticker for the current registration year must be displayed on each number plate, in the area designated by the department for the tab or sticker, in those years for which tabs or stickers are issued in lieu of number plates.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 261

HOUSE BILL NO. 1219

(Representatives D. Ruby, Kasper, Nathe, Toman)
(Senators Campbell, Klein)

AN ACT to amend and reenact subsection 9 of section 39-05-22, section 47-01-03, and subsections 1, 7, and 8 of section 47-10-27 of the North Dakota Century Code, relating to the process for converting manufactured housing to real property.

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~~Records of surrendered certificates of title and the records referred to in subsections 6, 7, and 8 must be maintained permanently ~~maintained~~. The department shall maintain a website an interested person may use to supply a vehicle identification number in order to confirm the status of a manufactured home as real estate under subsection 6 of section 47-10-27 and to confirm the department retired the manufacturer's certificate of origin or certificate of title.

SECTION 2. AMENDMENT. Section 47-01-03 of the North Dakota Century Code is amended and reenacted as follows:

47-01-03. Real property defined.

Real or immovable property ~~shall consist~~consists of:

1. Land;
2. That which is affixed to land, including manufactured homes as defined in section 41-09-02 with respect to which the requirements of ~~subsections 4 through 3~~subsection 6 of section ~~39-05-35, as applicable, 47-10-27~~ have been satisfied;
3. That which is incidental or appurtenant to land; and
4. That which is immovable by law.

¹²¹ **SECTION 3. AMENDMENT.** Subsection 1 of section 47-10-27 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section, "manufactured home" means a manufactured home as defined in section 41-09-02. Notwithstanding this definition, for purposes of 11 U.S.C. 1322(b)(2), a manufactured home is deemed real property. For purposes of this section, a manufactured home is permanently affixed if the manufactured home is ~~anchored~~affixed to real property ~~by~~

¹²¹ Section 47-10-27 was also amended by section 2 of House Bill No. 1250, chapter 89.

~~attachment to a permanent foundation; constructed in accordance with applicable state and local building codes and manufacturer's specifications as provided in title 24, Code of Federal Regulations, part 3285; and connected to residential utilities, such as water, gas, electricity, or sewer or septic service.~~

SECTION 4. AMENDMENT. Subsection 7 of section 47-10-27 of the North Dakota Century Code is amended and reenacted as follows:

7. Upon the satisfaction of the requirements of subsection 6, the manufactured home is deemed to be real property; any mortgage, deed of trust, lien, or security interest ~~which~~that can attach to land, buildings erected ~~thereon~~on the land, or fixtures affixed ~~thereto~~to the land attach as of the date of its recording in the same manner as if the manufactured home were built from ordinary building materials onsite. Title to the manufactured home must be transferred by deed or other form of conveyance that is effective to transfer an interest in real property, together with the land to which the structure has been affixed. The manufactured home is deemed to be real property and is governed by the laws applicable to real property and the department of transportation has no further authority or jurisdiction over the conveyance or encumbrance of the manufactured home.

SECTION 5. AMENDMENT. Subsection 8 of section 47-10-27 of the North Dakota Century Code is amended and reenacted as follows:

8. Except as provided in subsections 2, 3, 5, 6, and 7, an affidavit of affixation is not necessary or effective to convey or encumber a manufactured home or to change the character of the manufactured home to real property. ~~A conveyance of land upon which is located a manufactured home for which an affidavit of affixation has been recorded does not effect a conveyance or encumbrance of any interest in the manufactured home. A conveyance or encumbrance may only be made under the provisions of chapter 39-05. An agreement by a party to the transaction whereby~~by which the requirements of this subsection are waived is void as contrary to public policy.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 262

SENATE BILL NO. 2122

(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-06-02 of the North Dakota Century Code, relating to preventing nonresident, nonlicensed individuals from driving on the highway.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-02 of the North Dakota Century Code is amended and reenacted as follows:

39-06-02. Individuals who are exempt from having an operator's license - Resident defined.

1. The following individuals are exempt from having an operator's license:
 - a. An employee of the United States government while operating a motor vehicle owned by or leased to that government and being operated on official business.
 - b. A nonresident who is at least sixteen years of age, who has in that individual's immediate possession a valid operator's license issued to that individual in that individual's home state or country.
 - c. ~~A nonresident who is at least sixteen years of age, whose home state or country does not require the licensing of operators, for a period of not more than thirty days in any calendar year without making an application for or obtaining an operator's license of this state, if that individual has in that individual's possession while driving in this state an official certificate showing the lawful registry of the motor vehicle and be able to prove that individual's lawful possession or the right to operate the vehicle and to establish that individual's identity.~~
 - d. A member of the armed forces of the United States while that individual is stationed in North Dakota, if that individual has a valid current operator's license from another state.
 - e.d. An individual over sixteen years of age who becomes a resident of this state and who has in possession a valid operator's license issued to that individual under the laws of some other state or country or by military authorities of the United States for a period of not more than sixty days after becoming a resident of this state.
 - f.e. A member of the North Dakota national guard operating any military vehicles as authorized by a national guard operator's license while on duty.

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2. For purposes of this chapter, an individual is deemed a resident of this state when the individual has lived in the state for ninety consecutive days, unless the individual is a nonresident student, a tourist, or a member of the armed forces.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 263

SENATE BILL NO. 2126

(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to amend and reenact sections 39-06-08 and 39-06-09 of the North Dakota Century Code, relating to a minor's application for an operator's license and liability for the negligence of a minor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-08 of the North Dakota Century Code is amended and reenacted as follows:

39-06-08. Application of minors.

The application of any minor for an operator's license must be signed and verified before an individual authorized to administer oaths or the director, by the father, mother, or legal guardian, or if there is not a parent or legal guardian, then by another responsible adult who is willing to assume the obligation imposed under this chapter upon an individual signing the application of a minor. If the father, mother, or legal guardian is unable to appear, a father, mother, or legal guardian may designate, through a notarized document, an individual temporarily authorized to sign the application.

SECTION 2. AMENDMENT. Section 39-06-09 of the North Dakota Century Code is amended and reenacted as follows:

39-06-09. Liability for negligence of minor - General.

Any negligence of a minor when driving a motor vehicle upon a highway must be imputed to the individual who has signed the application of the minor for an operator's license, or upon the father, mother, or legal guardian if signing authority has been temporarily transferred under section 39-06-08. This individual is jointly and severally liable with the minor for any damages caused by the negligence, except as provided in section 39-06-10.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 264

HOUSE BILL NO. 1299

(Representatives Jones, Johnston, Kasper, Marschall, Owens, Paur, D. Ruby,
Satrom, Weisz)
(Senators Armstrong, Kannianen)

AN ACT to amend and reenact section 39-06-19 of the North Dakota Century Code, relating to operator's license renewal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²² **SECTION 1. AMENDMENT.** Section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Every operator's license issued under this chapter or chapter 39-06.2 expires and is renewed according to this section.
2. The expiration date of a noncommercial operator's license for an individual whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the 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 a noncommercial operator's license for an individual whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the 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.
3. The expiration date of a commercial operator's license for an individual 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 an individual 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.
4. An individual 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

¹²² Section 39-06-19 was also amended by section 7 of House Bill No. 1128, chapter 256.

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.

5. An applicant for renewal must present the application with the fee for renewal of license to the director not before ten months before the expiration date of the operator's license. The director may require an examination of an applicant as upon an original application. The director may require an applicant for renewal or a substitute to provide a social security card and proof of residence address. 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.
6. The director may not renew an operator's license if the license has been suspended under section 14-08.1-07. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order.
7. An applicant for renewal of an operator's license must provide a certificate of examination from the driver licensing or examining authorities or a statement as to the corrected and uncorrected vision of the applicant from a licensed physician or an optometrist, except as required under subsection 9. The director shall provide visual examination equipment at each location where a license may be renewed.
8. An individual submitting an application and the fee for renewal of license one year or more after the expiration of a license, except an applicant whose military service has terminated less than thirty days prior to the application, must be treated as an initial applicant.
9. A noncommercial applicant may apply by mail or electronically for renewal of a license during every other renewal cycle. The director may use vision information provided by the applicant to meet vision requirements for applicants under sixty-five years of age and adopt procedures necessary to implement this subsection.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 265

SENATE BILL NO. 2108

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-06-37, subsection 2 of section 39-06.1-10, and section 39-06.1-14 of the North Dakota Century Code, relating to a revoked or suspended operator's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-37 of the North Dakota Century Code is amended and reenacted as follows:

39-06-37. Surrender and return of license – Duration of multiple suspensions and revocations for separate violations.

1. ~~The director upon canceling or revoking an operator's license shall require that the license must be surrendered to and be retained by the director.~~
2. A suspension, revocation, or cancellation ordered under this title must be deemed to have commenced when the order is delivered to the licensee at the address of record in the department under section 39-06-20. Constructive delivery under this section must be considered as occurring forty-eight hours after the order is mailed to the person by regular mail.
- ~~3.~~2. Unless otherwise specifically provided in this title, any suspension, revocation, cancellation, or denial of licensing ordered under this title must be in addition to, and run consecutive to, any other or existing suspension, revocation, cancellation, or denial of licensing ordered for a separate violation.

SECTION 2. AMENDMENT. Subsection 2 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

2. If the director confirms, after hearing or opportunity for hearing, that the licensee's driving record has an accumulated point total of twelve or more points, the director shall suspend the licensee's operator's license according to the following schedule:

Accumulated Point Total:	Period of Suspension:
a. Twelve	7 days
b. Thirteen and above	7 days for each point over eleven

~~Surrender and return of a license suspended under this section is governed by section 39-06-37.~~

SECTION 3. AMENDMENT. Section 39-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-14. ~~Failure to surrender~~Delivery of license revocation.

~~The director shall extend the period of revocation in all cases that involve a time period, within this title, if the individual whose operator's license has been revoked fails to surrender the operator's license within forty-eight hours after delivery of the order of revocation. The period of revocation must be extended by one day for each day the individual fails to surrender the operator's license. Delivery of the order of~~revocation ~~is deemed to have occurred seventy-two hours after the order is mailed by regular mail to the address of record in the department under section 39-06-20.~~

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 266

HOUSE BILL NO. 1311

(Representatives Zubke, Guggisberg, Hatlestad, Keiser, Longmuir, Maragos)
(Senators Bekkedahl, Kreun)

AN ACT to amend and reenact subsection 2 of section 39-06.1-06 of the North Dakota Century Code, relating to the amount of statutory fees for littering on the highway; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²³ **SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
 - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, or 39-10-42, a fee of fifty dollars.
 - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
 - c. A violation of section 39-21-41.2, a fee of twenty-five dollars.
 - d. A violation of subsection 1 of section 39-12-02 or section 39-08-23, a fee of one hundred dollars.
 - e. A violation of subdivision d of subsection 1 of section 39-12-04, a fee of one hundred dollars.
 - f. A violation of subsection 1 of section 39-04-37 by an individual by becoming a resident of this state, a fee of one hundred dollars.
 - g. A violation of subsection 2 of section 39-10-21.1, a fee of two hundred fifty dollars.
 - h. A violation of section 39-10-59, a fee of ~~one~~five hundred dollars.
 - i. A violation of section 39-09-01, a fee of thirty dollars.
 - j. A violation of section 39-09-01.1, a fee of thirty dollars.
 - k. A violation of section 39-10-46 or 39-10-46.1, a fee of one hundred dollars.
 - l. A violation of subsection 1 of section 39-08-20, one hundred fifty dollars for a first violation and three hundred dollars for a second or subsequent violation in three years.

Approved March 24, 2017

Filed March 24, 2017

¹²³ Section 39-06.1-06 was also amended by section 2 of House Bill No. 1211, chapter 257, and section 1 of House Bill No. 1430, chapter 269.

CHAPTER 267

HOUSE BILL NO. 1133

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact a new subsection to section 39-06.2-06 of the North Dakota Century Code, relating to the exemption of a class A commercial driver's licenseholder from the hazardous materials endorsement; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-06.2-06 of the North Dakota Century Code is created and enacted as follows:

Pursuant to the limitations imposed by 49 Code of Federal Regulations part 383.3, the holder of a class A commercial driver's license is exempt from the hazardous materials endorsement, if the licenseholder is:

- a. Acting within the scope of the licenseholder's employment, and within the state of domicile, or another state with a hazardous materials enforcement exemption, as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, or livestock feeder; and
- b. Operating a service vehicle that is transporting diesel in a quantity of one thousand gallons [3785 liters] or less which is clearly marked with "flammable" or "combustible" placard, as appropriate.

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

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 268

SENATE BILL NO. 2176

(Senator Armstrong)

AN ACT to amend and reenact subdivision e of subsection 1 of section 39-08-01, subsection 7 of section 39-08-01, subsection 3 of section 39-08-01.2, subdivision a of subsection 3 of section 39-20-01, sections 39-20-03.1 and 39-20-03.2, subsection 2 of section 39-20-05, and subsection 3 of section 39-20-14 of the North Dakota Century Code, relating to driving under the influence; to repeal section 39-20-03 of the North Dakota Century Code, relating to driving under the influence; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁴ **SECTION 1. AMENDMENT.** Subdivision e of subsection 1 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

- e. That individual refuses to submit to any of the following:
 - (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
 - (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01; or
 - (3) ~~An onsite screening test, or tests, of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer under section 39-20-14.~~

¹²⁵ **SECTION 2. AMENDMENT.** Subsection 7 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees. For purposes of this section, the twenty-four

¹²⁴ Section 39-08-01 was also amended by section 14 of House Bill No. 1041, chapter 108, and section 2 of Senate Bill No. 2176, chapter 268.

¹²⁵ Section 39-08-01 was also amended by section 14 of House Bill No. 1041, chapter 108, and section 1 of Senate Bill No. 2176, chapter 268.

seven sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. If an individual ordered to participate in the twenty-four seven program is not a resident of this state, that individual shall enroll in a twenty-four seven program or an alcohol compliance program if available in that individual's state of residence and shall file proof of such enrollment.

SECTION 3. AMENDMENT. Subsection 3 of section 39-08-01.2 of the North Dakota Century Code is amended and reenacted as follows:

3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section. Whether an individual caused death or substantial or serious bodily injury must be determined in accordance with section 12.1-02-05.

¹²⁶ **SECTION 4. AMENDMENT.** Subdivision a of subsection 3 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. The law enforcement officer shall inform the individual charged that North Dakota law requires the individual to take ~~thea~~ chemical test to determine whether the individual is under the influence of alcohol or drugs; ~~that refusal to take the and that refusal of the individual to submit to a test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to three years of the individual's driving privileges may result in a revocation of the individual's driving privileges for a minimum of one hundred eighty days and up to three years. In addition, the law enforcement officer shall inform the individual refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence. If the officer requests the individual to submit to a blood test, the officer may not inform the individual of any criminal penalties until the officer has first secured a search warrant.~~

SECTION 5. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.1. Action following test result for a resident operator.

If a person submits to a test under section 39-20-01; ~~or 39-20-02; or 39-20-03~~ and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

¹²⁶ Section 39-20-01 was also amended by section 15 of House Bill No. 1041, chapter 108.

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 ~~or 39-20-03~~ was by urine sample or by drawing blood as provided in section 39-20-02 and the 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 urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to 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 individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the 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 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 individual who submitted to the blood or urine test, whether or not the 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 individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the 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 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 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 individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to 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 or urine test for all tests administered at the direction of the officer.

5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may elect to participate in the twenty-four seven sobriety program under chapter 54-12 in lieu of the administrative hearing under this chapter if the individual's driver's license is not subject to an unrelated suspension or revocation. Notwithstanding any other provision of law, an individual may not receive a temporary restricted operator's license until after fourteen days after the administrative hearing on the offense under this chapter has been waived or held, or after fourteen days of the final appeal, whichever is longer. The director shall issue a temporary restricted driver's license with the restriction the individual participate in the twenty-four seven sobriety program upon application by the individual with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program under chapter 54-12.

SECTION 6. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator.

If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, or 39-20-02, or ~~39-20-03~~ and the test results show the person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.
2. If the test was administered by urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to 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 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 or urine test for all tests administered at the direction of the officer. If the individual was issued a temporary operator's permit because of the 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 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 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 individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

SECTION 7. AMENDMENT. Subsection 2 of section 39-20-05 of the North Dakota Century Code is 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 an 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 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 an individual under twenty-one years of age, the 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 individual was placed under arrest, unless the 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 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 individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an 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 sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein.

SECTION 8. AMENDMENT. Subsection 3 of section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

3. 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 individual that North Dakota law requires the individual to take the screening test to determine whether the individual is under the influence of alcohol, ~~that refusal to take the screening test is a crime~~, and that refusal of the individual to submit to a screening test may result in a revocation for at least one hundred eighty days and up to three years of that individual's driving privileges. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is admissible in a court proceeding if the individual was arrested in violation of 39-08-01 and did not take any additional chemical tests requested by the law enforcement officer. Such refusal is sufficient cause to revoke such 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.

SECTION 9. REPEAL. Section 39-20-03 of the North Dakota Century Code is repealed.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 269

HOUSE BILL NO. 1430

(Representatives Mock, Dobervich, D. Ruby, Sukut)
(Senators Laffen, D. Larson)

AN ACT to create and enact a new section to chapter 39-08 of the North Dakota Century Code, relating to failure to maintain control of a motor vehicle; to amend and reenact subsection 2 of section 39-06.1-06 and sections 39-06.1-09 and 39-08-23 of the North Dakota Century Code, relating to fees for a moving violation and the use of a wireless communication device while driving; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
 - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, or 39-10-42, a fee of fifty dollars.
 - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
 - c. A violation of section 39-21-41.2, a fee of twenty-five dollars.
 - d. A violation of subsection 1 of section 39-12-02 ~~or~~ section 39-08-23, or section 4 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.
 - f. A violation of subsection 1 of section 39-04-37 by an individual by becoming a resident of this state, a fee of one hundred dollars.
 - g. A violation of subsection 2 of section 39-10-21.1, a fee of two hundred fifty dollars.
 - h. A violation of section 39-10-59, a fee of one hundred dollars.
 - i. A violation of section 39-09-01, a fee of thirty dollars.
 - j. A violation of section 39-09-01.1, a fee of thirty dollars.
 - k. A violation of section 39-10-46 or 39-10-46.1, a fee of one hundred dollars.

¹²⁷ Section 39-06.1-06 was also amended by section 2 of House Bill No. 1211, chapter 257, and section 1 of House Bill No. 1311, chapter 266.

- I. A violation of subsection 1 of section 39-08-20, one hundred fifty dollars for a first violation and three hundred dollars for a second or subsequent violation in three years.

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, 39-06-14.1, 39-06-16, 39-08-20, 39-08-23, 39-08-24, section 4 of this Act 39-09-01, 39-09-01.1, 39-09-04.1, or 39-09-09, subsection 1 of section 39-12-02, section 39-12-04, 39-12-05, 39-12-06, 39-12-09, 39-21-45.1, 39-24-02, or 39-24-09, except subdivisions b and c of subsection 5 of section 39-24-09, 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, section 39-21-44, and 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. AMENDMENT. Section 39-08-23 of the North Dakota Century Code is amended and reenacted as follows:

39-08-23. 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 electronic mail, a text message, an instant message, a command or request to access a worldwide 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, smartphones, 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; or

(6) A wireless communications device used in a voice-activated, voice-operated, or any other hands-free manner.

- 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.

SECTION 4. A new section to chapter 39-08 of the North Dakota Century Code is created and enacted as follows:

Failure to maintain control.

1. An operator of a motor vehicle may not fail to maintain control of that motor vehicle. An individual is in violation of this section if that individual:
 - a. Commits an offense under this title and, at the time of the offense, the individual was engaged in the operation of a motor vehicle while distracted; or
 - b. Is determined to have been the operator of a motor vehicle that was involved in a reportable accident as defined in section 39-08-09 which resulted in property damage and, at the time the reportable accident occurred, the individual was engaged in the operation of a motor vehicle while distracted.
2. An individual may be issued a citation or summons for any other traffic offense that was committed by the individual in relation to the individual's commission of the traffic offense of failure to maintain control of a motor vehicle.
3. As used in this section, "operation of a motor vehicle while distracted" means the operation of a motor vehicle by an individual who, while operating the vehicle, is engaged in an activity that:
 - a. Is not necessary to the operation of the vehicle; and
 - b. Actually impairs, or would reasonably be expected to impair, the ability of the individual to safely operate the vehicle.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 270

HOUSE BILL NO. 1288

(Representatives D. Ruby, Delmore, Owens, Sanford)
(Senators Campbell, Casper, Laffen)

AN ACT to amend and reenact section 39-12-02 of the North Dakota Century Code, relating to an annual permit for oversized vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁸ **SECTION 1. AMENDMENT.** Section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees.

1. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home, or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting the permit. ~~Every~~The permit must be carried in the vehicle to which it refers in printed or electronic format and must be opened to inspection by ~~any~~a peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of this chapter for ~~any~~a person to violate any of the terms or conditions of the permit. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.
2. Upon ~~any~~an application for a permit to move a new manufactured building or modular unit from outside this state to be located anywhere within this state, the manufacturer is deemed to have certified that the new manufactured building or modular unit meets all applicable building codes and all applicable electrical wiring and equipment, plumbing, and fire standards. The state is not liable to ~~any~~a person for issuing a permit in violation of this subsection.
3. An appropriate charge must be made for ~~each~~a permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the department. Permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system. Publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:

¹²⁸ Section 39-12-02 was also amended by section 1 of House Bill No. 1320, chapter 271, section 9 of Senate Bill No. 2011, chapter 36, and section 3 of Senate Bill No. 2097, chapter 258.

- 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.
 - i. The fee for an overwidth vehicle or load that is fourteen feet six inches [4.42 meters] or less is twenty dollars per trip or one hundred fifty dollars per calendar year unless the vehicle is a noncommercial fishhouse trailer being moved by the owner, then the fee is twenty dollars per calendar year.
 - j. The fee for an overlength vehicle or load that is one hundred twenty feet [36.576 meters] or less is twenty dollars per trip or one hundred fifty dollars per calendar year.
 - j-k. The highway patrol may establish an online electronic permit system. If the highway patrol establishes an online electronic permit system, the highway patrol shall assess an additional fifteen dollar fee for every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.
4. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.
 5. Permits issued for overdimensional movements of vehicles that do not exceed exceeding ten feet [3.05 meters] in total width, including load, are valid for travel during the day and night. Permits issued for overdimensional movements of vehicles not exceeding one hundred and twenty feet [36.576 meters] in total length, including load, are valid for travel during the day and night with proper lighting.
 6. 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.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 271

HOUSE BILL NO. 1320

(Representatives D. Ruby, B. Anderson, Jones, Steiner)
(Senators Bekkedahl, Laffen, Rust)

AN ACT to amend and reenact sections 39-12-02 and 39-12-03 of the North Dakota Century Code, relating to a uniform truck permitting system for oversized or overweight vehicles and local authority to limit use of vehicles on highways; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁹ **SECTION 1. AMENDMENT.** Section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees.

1. a. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home, or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. ~~Every~~A permit may designate the route to be traversed and may contain ~~any~~ other restrictions or conditions deemed necessary by the body granting the permit. Every permit must be carried in the vehicle to which it refers in printed or electronic format and must be opened to inspection by ~~any~~a peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of this chapter for ~~any~~a person to violate ~~any~~ of the terms or conditions of the permit. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.
- b. Each township in a county that participates in a uniform truck permitting system for authorization of oversized or overweight vehicle movements shall participate in the same system.
- c. When fee changes are proposed, a uniform permit system shall provide public notice of the date, hour, and place at which the public may comment on the proposed fee changes.
- d. Notwithstanding any other provision of this chapter, a city, county, or township having control of roads may not impose additional fees for the use of roads beyond the fees established under a uniform permit program. A city, county, or township may issue a penalty to a person that violates a posted road restriction. If a permit is denied, a person may receive an

¹²⁹ Section 39-12-02 was also amended by section 1 of House Bill No. 1288, chapter 270, section 9 of Senate Bill No. 2011, chapter 36, and section 3 of Senate Bill No. 2097, chapter 258.

additional fee or condition from the city, county, or township in exchange for authorization to move an oversized or overweight vehicle on a road under the jurisdiction of the city, county, or township.

2. Upon any application for a permit to move a new manufactured building or modular unit from outside this state to be located anywhere within this state, the manufacturer is deemed to have certified that the new manufactured building or modular unit meets all applicable building codes and all applicable electrical wiring and equipment, plumbing, and fire standards. The state is not liable to any person for issuing a permit in violation of this subsection.
3. An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the department. Permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system. Publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:
 - a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.
 - b. The fee for 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.
 - 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 fishhouse trailer being moved by the owner, then the fee is twenty dollars per calendar year.
 - j. 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.
4. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.

5. 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.
6. 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 2. AMENDMENT. Section 39-12-03 of the North Dakota Century Code is amended and reenacted as follows:

39-12-03. Director or local authorities may limit use of vehicles on highways - Exception for inclement weather.

1. Whenever ~~any~~ highway will be seriously damaged or destroyed by reason of deterioration, rain, snow, or other climatic conditions unless the use of vehicles is prohibited or the weight of the vehicle thereon is limited, the director or employees authorized by the director by an order, and local authorities by ordinance or resolution, may prohibit the operation of vehicles upon such highway or may impose weight restrictions ~~as to the weight of on~~ vehicles. The director or employees making ~~such~~the order and local authorities enacting ~~any such~~the ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the order, ordinance, or resolution. ~~Such~~The signs must be erected and maintained at each end of ~~that~~the portion of ~~any~~ highway affected ~~thereby~~, and ~~such~~the order, ordinance, or resolution is not effective until ~~such~~the signs are erected and maintained. The operation of trucks or other commercial vehicles or limitations as to the weight ~~thereof~~ vehicles on designated highways may be prohibited or limited in the same manner.
2. In instances of inclement weather, as determined by the local authorities, changes may be made to existing posted restrictions on a portion of a highway if the local authority:
 - a. Gives public notice of the change in the posted restrictions on any portion of a highway by publishing the inclement weather restriction on the local authority's website and a uniform county permit system or similar permit system within one hour after the initial determination of inclement weather; and
 - b. Within five days of the first date of inclement weather, erects and maintains a sign at each end of the portion of the highway affected by the inclement weather restriction.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 272

HOUSE BILL NO. 1321

(Representatives C. Johnson, D. Anderson, D. Johnson, Jones)
(Senators Schaible, Wanzek)

AN ACT to amend and reenact subsection 4 of section 39-12-05.3 of the North Dakota Century Code, relating to weight limitations for vehicles on highways other than the interstate system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁰ **SECTION 1. AMENDMENT.** Subsection 4 of section 39-12-05.3 of the North Dakota Century Code is amended and reenacted as follows:

4. a. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing ~~a specific motor vehicle:~~
 - (1) ~~A farmer's farm vehicle or a motor carrier hired by a farmer to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from:~~
 - (a) ~~From the field of harvest to the point of initial storage site or to the first point of sale and transfer of possession during harvest; or~~
 - (b) ~~From the point of initial storage to the first point of sale and transfer of possession during the current year's harvest; or~~
 - (2) ~~A specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854 kilograms]. The permits must provide only for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh.~~
- b. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.

Approved April 12, 2017

Filed April 12, 2017

¹³⁰ Section 39-12-05.3 was also amended by section 2 of House Bill No. 1255, chapter 206.

CHAPTER 273

SENATE BILL NO. 2045

(Legislative Management)
(Transportation Committee)

AN ACT to amend and reenact sections 39-12-14.1 and 39-12-20 of the North Dakota Century Code, relating to voluntary settlement of extraordinary road use fee charges and proceeds of sale deposited with the state treasurer; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-12-14.1 of the North Dakota Century Code is amended and reenacted as follows:

39-12-14.1. ~~(Effective through June 30, 2017)~~ Voluntary settlement of extraordinary road use fee charges.

Before the complaint is issued under 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, is presumed to be voluntary. A peace officer or a peace officer's designee is authorized to receive the settlement payment on behalf of the authority having jurisdiction over the road on which the violation occurred. The extraordinary road use fees for a violation on an interstate or on a state highway must be deposited with the state treasurer to be credited to the state highway fund. Extraordinary road use fees for a violation that did not occur on an interstate or a state highway must be deposited in the general fund of the jurisdiction having authority over the road on which the violation occurred and must be used for the support of the road system of that jurisdiction.

~~(Effective after June 30, 2017) 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 deposited with the state treasurer to be credited to the highway fund.~~

SECTION 2. AMENDMENT. Section 39-12-20 of the North Dakota Century Code is amended and reenacted as follows:

39-12-20. (Effective through June 30, 2017) Proceeds of sale - Continuing appropriation.

The proceeds of sale must be deposited with the state treasurer. For a violation on an interstate or a state highway, the state treasurer shall deposit in the state highway fund an amount equal to the amount of the charges assessed under section 39-12-17 after paying the costs to the county. For any violation, an amount equal to the costs of the proceedings, including attorney's and witness fees and costs, is appropriated on a continuing basis out of the funds collected to the county of prosecution for the purpose of defraying the costs of prosecution. From the proceeds of sale for a violation that did not occur on an interstate or a state highway, the amount of charges assessed under section 39-12-17 is appropriated on a continuing basis and must be deposited in the general fund in the jurisdiction in which the violation occurred and must be used for the support of the road system of that jurisdiction. The balance of the proceeds of any sale after the payment of costs and charges is appropriated on a continuing basis out of the funds collected to be paid to the person entitled to the proceeds as determined by the court or must be deposited with the clerk of court for payment to that person.

~~(Effective after June 30, 2017) Proceeds of sale – Continuing appropriation.~~

~~The proceeds of sale must be deposited with the state treasurer. The state treasurer shall deposit in the highway fund an amount equal to the amount of the charges assessed pursuant to section 39-12-17 after paying the costs to the county. An amount equal to the costs of the proceedings, including attorney's and witness fees and costs, is appropriated on a continuing basis out of the funds collected to the county in which the prosecution took place for the purpose of defraying the costs of prosecution. The balance of the proceeds of any sale after the payment of costs and charges is appropriated on a continuing basis out of the funds collected to be paid to the person entitled thereto as determined by the court or must be deposited with the clerk of court for such payment.~~

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2017.

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

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 274

HOUSE BILL NO. 1323

(Representatives Owens, D. Anderson, Beadle, Sukut)
(Senators Bekkedahl, Kreun)

AN ACT to amend and reenact section 39-21-41.2 and 39-21-41.4 of the North Dakota Century Code, relating to child restraint devices and use of safety belts for children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-21-41.2 of the North Dakota Century Code is amended and reenacted as follows:

39-21-41.2. Child restraint devices - Evidence.

1. If a child, under seveneight years of age, is present in anya motor vehicle, that motor vehicle must be equipped with at least one child restraint system for ~~each such~~the child. However, a child under the age of seveneight who is at least fifty-seven inches [1.45 meters] tall and ~~who weighs at least eighty pounds [36.28 kilograms]~~ is not required to use a child restraint system, but must be correctly buckled in a safety belt. The child restraint system must meet the standards adopted by the United States department of transportation for those systems [49 CFR 571.213]. While the motor vehicle is in motion, ~~each such~~the child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. ~~A child weighing more than forty pounds [18.14 kilograms] may be restrained by a lap belt if the vehicle is not equipped with lap and shoulder belts or if all lap and shoulder belts are in use by other occupants.~~ While the motor vehicle is moving, each child of seveneight through seventeen years of age who is in the motor vehicle must be in an approved child restraint system in accordance with the manufacturer's instructions or correctly buckled in a seatbeltsafety belt. Use of child restraint systems and ~~seatbelts~~safety belts is not required in motor vehicles that were not equipped with ~~seatbelts~~safety belts when manufactured. If a child is being transported in an emergency situation, this section does not apply.
2. Violation of this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

SECTION 2. AMENDMENT. Section 39-21-41.4 of the North Dakota Century Code is amended and reenacted as follows:

39-21-41.4. Use of safety belts required in certain motor vehicles - Enforcement - Evidence.

Subject to the limitations of this section and section 39-21-41.5, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section

does not apply to a child in a child restraint or ~~seats~~safety belt in accordance with section 39-21-41.2; to drivers of implements of husbandry; to operators of farm vehicles as defined in subsection 5 of section 39-04-19; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician, physician assistant, or advanced practice registered nurse states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all front seat safety belts are in use by other occupants. A physician, physician assistant, or advanced practice registered nurse who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 275

HOUSE BILL NO. 1102

(Transportation Committee)

(At the request of the Parks and Recreation Department)

AN ACT amend and reenact subsections 1 and 2 of section 39-29-04 and section 39-29-12 of the North Dakota Century Code, relating to off-highway vehicle out-of-state registration; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 39-29-04 of the North Dakota Century Code are amended and reenacted as follows:

1. Registration and payment of fees is not required of:
 - a. Off-highway vehicles owned and used by the United States or ~~another~~any state or its political subdivisions.
 - b. Off-highway vehicles registered in a foreign country and temporarily used in this state.
 - c. Off-highway vehicles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. Off-highway vehicles used exclusively on private lands.
 - e. Off-highway vehicles used exclusively in organized track racing events.
2. ~~Off highway vehicles owned by the state or any of its political subdivisions are exempt from the registration fees in section 39-29-03. If an off-highway vehicle is exempt from registration under subdivision b or c of subsection 1, the owner shall purchase an out-of-state public trails and lands access permit received upon payment of a ten dollar per-year fee. Dealers or other agents authorized by the director of the parks and recreation department who sell out-of-state public trails and lands access permits may retain one dollar of the ten dollar per-year fee. The remainder of the fees collected under this subsection must be deposited in the off-highway vehicle fund.~~

SECTION 2. AMENDMENT. Section 39-29-12 of the North Dakota Century Code is amended and reenacted as follows:

39-29-12. Penalties.

Violation of subdivision b, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-29-02 or subsection 2 of section 39-29-04 is an infraction, for which a fee of fifty dollars must be assessed. If the individual provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 276

HOUSE BILL NO. 1249

(Representatives Beadle, Howe, Nathe, O'Brien, Roers Jones)
(Senators Casper, Meyer)

AN ACT to amend and reenact section 39-34-06 of the North Dakota Century Code, relating to regulation of transportation network companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-34-06 of the North Dakota Century Code is amended and reenacted as follows:

39-34-06. Controlling authority.

Notwithstanding any other provision of law, transportation network companies and transportation network company drivers are governed exclusively by this chapter and chapter 26.1-40.1, and any rules adopted consistent with this chapter and adopted by the insurance commissioner under chapter 26.1-40.1. A political subdivision may not impose a tax on, or require a license for, a transportation network company or a transportation network company driver or subject a transportation network company to the political subdivision's rate, entry, operational, or other requirements. ~~A political subdivision may prohibit a transportation network company from operating without a state permit within the jurisdiction of the political subdivision.~~

Approved April 3, 2017

Filed April 4, 2017

MUNICIPAL GOVERNMENT

CHAPTER 277

SENATE BILL NO. 2166

(Senators Cook, Laffen, Unruh)
(Representatives Dockter, Headland, Olson)

AN ACT to create and enact a new section to chapter 40-05 of the North Dakota Century Code, relating to approval of property tax incentives granted by a city; to amend and reenact subsection 7 of section 40-57.1-03, section 40-58-20.2, subsection 2 of section 40-63-01, and subsection 3 of section 54-35-26 of the North Dakota Century Code, relating to approval of property tax incentives granted by a city and evaluation of economic development tax incentives; to provide for legislative management studies; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³¹ **SECTION 1.** A new section to chapter 40-05 of the North Dakota Century Code is created and enacted as follows:

Duties of cities granting property tax incentives.

1. Notwithstanding any other provision of law, before granting a property tax incentive on any parcel of property that is anticipated to receive a property tax incentive for more than five years, the governing body of a city shall send the chairman of each county commission and the president of each school district affected by the property tax incentive a letter, by certified mail, which provides notice of the terms of the proposed property tax incentive.
2. Within thirty days from receipt of the letter, each affected county and school district shall notify the city, in writing, whether the county or school district elects to participate in granting the tax incentive on the county or school district portion of tax levied on the property. The notification from a county or school district electing not to participate must include a letter explaining any reason for which the entity elected not to participate and whether the county or school district is willing to negotiate the terms of the property tax incentive with the city.
3. If the city does not receive a response from an affected county or school district within thirty days of delivery of the letter, the county and school district must be treated as participating in the property tax incentive.
4. The term "negotiation" as used in this section means the governing body of an affected county or school district may negotiate the terms of participating in the tax incentive, including the duration of the tax incentive and the taxable value selected for the base year for purposes of computing tax increments.

¹³¹ Section 40-05-24 was amended by section 22 of House Bill No. 1015, chapter 14.

5. If an agreement is reached through negotiation under this section, the property tax incentive must be applied in accordance with the agreement.

SECTION 2. AMENDMENT. Subsection 7 of section 40-57.1-03 of the North Dakota Century Code is amended and reenacted as follows:

7. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action. Before granting a property tax incentive on any parcel of property that is anticipated to receive a property tax incentive for more than five years, the governing body of a city must comply with the requirements in section 1 of this Act.

SECTION 3. AMENDMENT. Section 40-58-20.2 of the North Dakota Century Code is amended and reenacted as follows:

40-58-20.2. Tax increment financing proposal - Public hearing - Invitation to representatives of affected taxing districts.

1. 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. a. The anticipated costs of development of property to be reimbursed by tax incentives.
 2. b. The anticipated annual revenue from tax increments which will be received to complete the development or renewal plan.
 3. c. The anticipated date when the plan will be completed, the costs will be fully paid, and the tax increments will be released.
 4. d. The estimate of the dollars annually attributable to the levies from each taxing entity which will be credited to the tax increment fund.
2. Before granting a property tax incentive on any parcel of property that is anticipated to receive a property tax incentive for more than five years, the governing body of the municipality must comply with the requirements in section 1 of this Act.

SECTION 4. AMENDMENT. Subsection 2 of section 40-63-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Development plan" means a written plan that addresses the criteria in subsection 1 of section 40-63-03 and includes the following:
 - a. A map of the proposed renaissance zone which indicates the geographic boundaries and blocks, a description of the properties and structures on

- each block, identification of those properties and structures to be targeted for potential zone projects, and a description of the present use and conditions of the targeted properties and structures.
- b. A description of the existing physical assets, in particular natural or historical assets, of the zone and a plan for the incorporation and enhancement of the assets within the proposed development.
 - c. An outline of goals and objectives and proposed outcomes, including major milestones or benchmarks, by which to gauge success resulting from the designation of the zone.
 - d. A description of the types of projects the city would encourage in the city's targeted properties.
 - e. A description of the promotion, development, and management strategies to maximize investment in the zone.
 - f. A plan for the development, promotion, and use of a renaissance fund organization, if one is desired to be established. If a city is not ready to commit to establishing a renaissance fund organization, the city may indicate in the renaissance zone application the city's desire to submit a plan for approval at a later date.
 - g. Evidence of community support and commitment from residential and business interests. Evidence of community support must include letters of support from the governing bodies of each county and school district that contain property located within the boundaries of the proposed renaissance zone.

¹³² **SECTION 5. AMENDMENT.** Subsection 3 of section 54-35-26 of the North Dakota Century Code is amended and reenacted as follows:

3. The legislative management interim committee assigned the study responsibility under this section may examine economic development tax incentives, shall complete analysis of the ~~state-imposed tax aspects of the~~ incentives it designates for analysis during the interim, and shall approve a plan to provide that each of the economic development tax incentives listed in this subsection is subject to a complete analysis within each six-year period. The interim committee may include in its recommendations any amendments to this section, including amendments to add or remove incentives from the list of incentives subject to analysis under this subsection. Analysis must be completed for ~~state-imposed tax aspects of~~ economic development tax incentives, including each of the following:
 - a. Renaissance zone credits and exemptions.
 - b. Research expense credit.
 - c. Agricultural commodity processing facility investment credit.
 - d. Biodiesel fuel production facility construction or retrofit credit, biodiesel fuel blending credit, and biodiesel fuel equipment credit.

¹³² Section 54-35-26 was also amended by section 1 of House Bill No. 1049, chapter 390, and section 1 of House Bill No. 1050, chapter 389.

- e. Seed capital investment credit.
- f. Wage and salary credit.
- g. Internship program credit.
- h. Microbusiness credit.
- i. Angel fund investment credit.
- j. Workforce recruitment credit.
- k. Soybean or canola crushing facility construction or retrofit credit.
- l. Manufacturing automation equipment credit.
- m. New or expanding business exemption.
- n. Manufacturing and recycling equipment sales tax exemption.
- o. Coal severance and conversion tax exemptions.
- p. Oil and gas gross production and oil extraction tax exemptions.
- q. Fuel tax refunds for certain users.
- r. New jobs credit from income tax withholding.
- s. ~~Any economic development tax incentive created by the sixty-fourth legislative assembly~~ Development or renewal area incentives.
- t. Sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility.
- u. Sales and use tax exemption for materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas.
- v. Sales and use tax exemption for enterprise information technology equipment and computer software used in a qualified data center.

SECTION 6. LEGISLATIVE MANAGEMENT STUDY - PROPERTY TAX IMPACTS FROM CITY GROWTH AND DEVELOPMENT. During the 2017-18 interim, the legislative management shall consider studying how city growth and infill development affects property taxes, and evaluate the return on investment for state and community projects. The study must examine various policies affecting city development patterns, including the impact of transfer payments between state and local governments; the cost of government services and infrastructure, including future liability; the amount of tax revenue generated per increment of assumed liability for downtown areas; and whether certain areas of a city generate more revenue than expenses while other areas generate more expenses than revenue. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 7. LEGISLATIVE MANAGEMENT STUDY - APPLICATION OF PROPERTY TAX INCENTIVES. During the 2017-18 interim, the legislative management shall consider studying the duplicative application of property tax incentives, including benefits received by properties located in both a tax increment financing district and a renaissance zone; the duration for which a single property may benefit from the use of multiple property tax incentives; and the impacts on the remainder of the property tax base that is not receiving incentives created as a result of offering property tax incentives. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 8. EFFECTIVE DATE. Sections 1 through 4 of this Act are effective for property tax incentives approved after July 31, 2017.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 278

SENATE BILL NO. 2238

(Senator Oehlke)

AN ACT to amend and reenact sections 40-08-09 and 40-09-17 of the North Dakota Century Code, relating to employing as city employees members of a city council or city commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-08-09 of the North Dakota Century Code is amended and reenacted as follows:

40-08-09. Restrictions on members of council.

1. Except as provided in ~~subsection 2~~this section, no member of the city council shall:
 - a. Be eligible to any other office the salary of which is payable out of the city treasury;
 - b. Hold any other office under the city government; or
 - c. Hold a position of remuneration in the employment of the city.
2. A member of the city council may serve as an ambulance crew member employed by the city or under a contract with the city and be remunerated for those services or as a volunteer firefighter or ambulance crew member for the city and be compensated for attending training or responding to emergency calls or may be reimbursed for expenses incurred in attending training or in responding to emergency calls.
3. A member of the city council in a city having a population of five hundred or fewer may hold a position of remuneration in the employment of the city if no other qualified individual is available to hold the position of remuneration at an equal cost to the city. The decision to employ the member of the city council must receive the unanimous approval of the other members of the council, and the approval must be documented in the official minutes of the council. This subsection does not apply to appointed officer positions under section 40-14-04.

SECTION 2. AMENDMENT. Section 40-09-17 of the North Dakota Century Code is amended and reenacted as follows:

40-09-17. Restrictions on members of board.

1. Except as provided in ~~subsection 2~~this section, a member of the board of city commissioners may not:
 - a. Be eligible to any other office the salary of which is payable out of the city treasury;

- b. Hold any other office under the city government; and
 - c. Hold a position of remuneration in the employment of the city.
2. A member of a board of city commissioners may serve as an ambulance crew member employed by the city or under a contract with the city and be remunerated for those services or as a volunteer firefighter or ambulance crew member for the city and be compensated for attending training or responding to emergency calls or may be reimbursed for expenses incurred in attending training or in responding to emergency calls.
3. A member of the board of city commissioners in a city having a population of five hundred or fewer may hold a position of remuneration in the employment of the city if no other qualified individual is available to hold the position of remuneration at an equal cost to the city. The decision to employ the member of the city commission must receive the unanimous approval of the other members of the commission, and the approval must be documented in the official minutes of the commission. This subsection does not apply to appointed officer positions under section 40-15-05.

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

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 279

SENATE BILL NO. 2148

(Senators Kreun, Campbell)
(Representatives D. Anderson, Sukut)

AN ACT to create and enact a new subsection to section 40-16-03 of the North Dakota Century Code, relating to training for city auditors; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 40-16-03 of the North Dakota Century Code is created and enacted as follows:

Training. For an individual who is appointed to the position of city auditor, to complete, within one year of assuming office, training based on a curriculum specific to that office and approved by a statewide association representing cities.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 2018.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 280

SENATE BILL NO. 2132

(Senators Armstrong, Hogue)
(Representatives Maragos, Toman)

AN ACT to amend and reenact section 40-18-15.1 of the North Dakota Century Code, relating to transfer 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 for disposition if the defendant and prosecuting attorney agree to the remand. If the defendant does not waive a jury trial~~ Unless remanded to the municipal court by agreement of the parties, 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 March 24, 2017

Filed March 24, 2017

CHAPTER 281

SENATE BILL NO. 2304

(Senators Roers, Bekkedahl, Kreun)
(Representatives Beadle, Dockter, Sukut)

AN ACT to amend and reenact section 40-29-11 of the North Dakota Century Code, relating to payment of assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-29-11 of the North Dakota Century Code is amended and reenacted as follows:

40-29-11. Payment of assessments - Interest.

All assessments for sidewalks ~~shall~~must be payable in equal annual amounts extending over a period of not exceeding ~~ten~~twenty years and ~~shall~~must bear interest at an annual rate of not more than two percentage points above the average net annual interest rate on ~~any~~ warrants for the total amount of the assessments remaining unpaid. Anyone may pay the sidewalk assessment in one single payment, and anyone who has paid ~~any~~ one or more installments may pay the balance in one payment.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 282

HOUSE BILL NO. 1385

(Representative Klemin)

AN ACT to create and enact section 40-57-19.2 of the North Dakota Century Code, relating to municipal refunding bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 40-57-19.2 of the North Dakota Century Code is created and enacted as follows:

40-57-19.2. Refunding bonds.

1. Any municipality may provide for the issuance of refunding bonds to refund, in whole or in part, bonds previously issued by the municipality under the authority of this chapter for any of the following purposes:
 - a. To extend the maturities of the outstanding bonds.
 - b. To consolidate or restructure or reduce the debt service of the outstanding bonds.
 - c. To remove covenants made with respect to the issuance of the outstanding bonds.
2. The principal amount of the refunding bonds may include:
 - a. The principal amount of the outstanding bonds to be refunded.
 - b. Any interest accrued or to accrue to the earliest or subsequent date of redemption, or maturity of the outstanding bonds to be refunded.
 - c. Any redemption premium required to be paid on the outstanding bonds to be refunded.
 - d. Any expenses related to the issuance of the refunding bonds.
 - e. Any interest on the refunding bonds to be paid with the proceeds of the refunding bonds.
3. When the refunding bonds are issued and sold by more than six months in advance of the date or dates determined by the issuer for the redemption or retirement of all of the outstanding bonds to be refunded, the proceeds of the refunding bonds, including any premium or accrued interest, must be deposited in escrow with a suitable bank or trust company. The escrowed proceeds must be invested and reinvested in direct obligations of the United States or any agency or instrumentality of the United States, in any obligations of which the principal and interest are unconditionally guaranteed by the United States, in certificates of deposit or time deposits secured by direct obligations of the United States, or by obligations of which the principal and

interest are unconditionally guaranteed by the United States. Funds other than proceeds of the refunding bonds, including moneys on hand in a bond fund or sinking fund maintained for the payment of the outstanding bonds to be refunded and not immediately needed for the payment of interest or principal due, also may be deposited in the escrow fund and invested in the same manner as the proceeds of the refunding bonds. The principal of and earnings on the obligations or securities in the escrow fund may be used to retire or redeem the outstanding bonds, pay any principal of or interest on the refunding bonds, or pay any expenses relating to the retirement or redemption of the outstanding bonds or the issuance of the refunding bonds. Any proceeds of the refunding bonds or money in the escrow fund not expended as set forth in this section may be returned to the industrial or commercial enterprise as an overpayment of rentals or purchase price installments.

Approved March 22, 2017

Filed March 23, 2017

UNIFORM COMMERCIAL CODE

CHAPTER 283

SENATE BILL NO. 2214

(Senators Casper, Kannianen, D. Larson)
(Representatives Blum, Howe)

AN ACT to amend and reenact subsection 2 of section 41-09-87 of the North Dakota Century Code, relating to the requirement of a social security number or internal revenue service taxpayer identification number on uniform commercial code and secured transaction records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 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 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;

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- 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
 - (2) Indicate whether the name provided as the name of the debtor is an individual or an organization;
 - 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~~In the case of filings entered in the secretary of state's online filing system, the record does not contain the social security number or the internal revenue service taxpayer identification number of the debtor.

Approved March 15, 2017

Filed March 16, 2017

OCCUPATIONS AND PROFESSIONS

CHAPTER 284

HOUSE BILL NO. 1094

(Industry, Business and Labor Committee)
(At the request of the Board of Barber Examiners)

AN ACT to amend and reenact section 43-04-07 of the North Dakota Century Code, relating to per diem for board of barber examiners board members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-04-07 of the North Dakota Century Code is amended and reenacted as follows:

43-04-07. Compensation - Expenses - How paid.

Each member of the board is entitled to receive daily compensation for actual services in an amount not to exceed ~~sixty-two~~ one hundred dollars and must be paid for actual expenses, as provided by law, incurred in attending meetings of the board and in performing official duties. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 285

HOUSE BILL NO. 1092

(Industry, Business and Labor Committee)
(At the request of the Board of Barber Examiners)

AN ACT to amend and reenact sections 43-04-26, 43-04-31, 43-04-32, 43-04-33, 43-04-35, 43-04-36, 43-04-39, 43-04-42, and 43-04-45 of the North Dakota Century Code, relating to the repeal of apprentice barbering requirements; and to repeal sections 43-04-22, 43-04-23, 43-04-28, 43-04-29, and 43-04-34 of the North Dakota Century Code, relating to the repeal of apprentice barbering requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-04-26 of the North Dakota Century Code is amended and reenacted as follows:

43-04-26. Application for admission to barber school for postgraduate course.

~~No~~A school or college of barbering may not enroll or admit any student in a postgraduate course thereof, unless ~~such~~the student ~~shall file~~files, in duplicate, an application, duly verified, which ~~must show that such~~the applicant:

1. Has graduated from a school or college of barbering approved by the board;
2. ~~Then holds a valid, unexpired, and uncanceled certificate of registration as a registered apprentice; or~~
3. Can prove by sworn affidavits that the applicant has practiced as a barber in another state of the United States for at least two years immediately prior to making ~~such~~the application.

One copy of ~~such~~the application must be retained by the college or school so admitting or enrolling ~~such~~the student and the other must be filed by such school or college with ~~said~~the board. ~~Nothing in this~~This section contained may not be construed as limiting or modifying the provisions of sections 43-04-31 and 43-04-35.

¹³³ **SECTION 2. AMENDMENT.** Section 43-04-31 of the North Dakota Century Code is amended and reenacted as follows:

43-04-31. Qualifications for certificate of registration as registered barber.

A person is qualified to receive a certificate of registration to practice barbering if the person:

1. Is qualified in accordance with the provisions of section 43-04-23;
2. Is at least eighteen years of age;

¹³³ Additional corrections were made to S.L. 2017, ch. 285, § 2 because of the repeal of section 43-04-22 in S. L. 2017, ch. 285, § 10.

3. Is of good moral character and temperate habits;
4. ~~Has practiced as a registered apprentice for a period of twelve months under the immediate supervision of a registered barber; and~~
5. Has passed a satisfactory examination conducted by the board to determine that person's fitness to practice barbering.

SECTION 3. AMENDMENT. Section 43-04-32 of the North Dakota Century Code is amended and reenacted as follows:

43-04-32. Barber and apprentice - Application for examination.

Any person who desires to take the examination for a certificate of registration to practice as a registered barber ~~or for a certificate of registration to practice as a registered apprentice~~, shall make application to the board on blanks prepared and furnished by ~~the board~~ and shall enclose with the application all of the following:

1. Proof, under oath, of the person's qualifications.
2. A five-inch by three-inch [12.7-centimeter by 7.62-centimeter] signed photograph of that person. The person also shall present such a photograph to the board when the person appears for examination.
3. The required fee.
4. A certificate showing graduation from a public or recognized private high school or an equivalent education as determined by an examination conducted by the board; provided, however, that two years armed service should be termed equivalent education.

SECTION 4. AMENDMENT. Section 43-04-33 of the North Dakota Century Code is amended and reenacted as follows:

43-04-33. Examinations - Barber -~~Apprentice barber.~~

The board, not less than four times each year, at such times and places as it may determine, shall conduct examinations of applicants for certificates of registration to practice as registered barbers ~~and of applicants for certificates of registration to practice as registered apprentices~~. Each examination must include both a practical demonstration and a written and oral test, and must embrace the subjects usually taught in schools of barbering approved by the board.

SECTION 5. AMENDMENT. Section 43-04-35 of the North Dakota Century Code is amended and reenacted as follows:

43-04-35. Failure to pass examination for registered barber - When applicant may be re-examined.

An applicant for a certificate of registration to practice as a registered barber who fails to pass a satisfactory examination conducted by the board ~~shall continue to practice as an apprentice for~~ must wait an additional ~~six~~three months before that person again is entitled to take the examination for registration as a barber.

SECTION 6. AMENDMENT. Section 43-04-36 of the North Dakota Century Code is amended and reenacted as follows:

43-04-36. Barber and apprentice - Certificate of registration - When issued.

The board shall issue to an applicant a certificate of registration as a registered barber whenever the applicant has complied with the provisions of section 43-04-31; and it shall issue a certificate of registration as a registered apprentice whenever the applicant has complied with the provisions of section 43-04-23.

SECTION 7. AMENDMENT. Section 43-04-39 of the North Dakota Century Code is amended and reenacted as follows:

43-04-39. Renewal and restoration of certificates of barber and apprentice barber.

Every registered barber and every registered apprentice who continues in active practice or service, annually, on or before July first, shall renew that person's certificate of registration and pay the required fee. Every certificate of registration which has not been renewed during the month of July in any year expires the first day of August in that year. A registered barber or a registered apprentice whose certificate of registration has expired may have that person's certificate restored immediately upon payment of the required restoration fee. Any registered barber who retires from the practice of barbering for not more than five years may renew that person's certificate upon payment of the required restoration fee.

SECTION 8. AMENDMENT. Section 43-04-42 of the North Dakota Century Code is amended and reenacted as follows:

43-04-42. Fees.

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.~~
 - e. For renewal of a master barber's certificate, one hundred dollars.
 - ~~d.c.~~ For restoration of an expired master barber's certificate, a 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 twenty dollar penalty fee in addition to the regular renewal fee.
 - ~~g.d.~~ For a permit to operate a barber school or college, an annual fee of one hundred twenty-five dollars.
 - ~~h.e.~~ For issuance of an annual barbershop license, fifty dollars, to be paid by each shop owner in advance.
 - ~~i.f.~~ For issuance of a certificate to an applicant who qualifies under section 43-04-38.1, one hundred seventy-five dollars.
 - ~~j.g.~~ For restoration of an expired barbershop license, a twenty dollar penalty fee in addition to the annual license fee.

- k-h. 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 one hundred dollars to cover expenses of inspection, which must be retained by the board and deposited as other fees.
 3. A duplicate license, certificate, or permit must be issued upon:
 - a. Filing a statement verified by the oath of the applicant which explains the loss;
 - b. Submitting a signed photograph of the applicant; and
 - c. Paying a fee of ten dollars for the issuance of the duplicate.
 4. Anyone who becomes a member of the armed forces of the United States in time of war, while holding a license as a barber or apprentice, and while in good standing as to payment of fees, may obtain a certificate restoration without payment of the restoration fee.

SECTION 9. AMENDMENT. Section 43-04-45 of the North Dakota Century Code is amended and reenacted as follows:

43-04-45. Penalty.

Any person who shall:

1. Violate any of the provisions of sections 43-04-21, 43-04-22, 43-04-30, and 43-04-43;
2. Permit any person in that person's employ, supervision, or control to practice as an ~~apprentice or~~ barber unless the person employed, supervised, or controlled has a certificate of registration as a registered ~~apprentice or~~ barber;
3. Obtain or attempt to obtain a certificate of registration by the payment of money other than the required fee, or any other thing of value, or by fraudulent misrepresentations;
4. Practice or attempt to practice by fraudulent misrepresentations; or
5. Willfully fail to display a certificate of registration as is required by this chapter,

is guilty of a class B misdemeanor. A violation of any provision of this chapter or of any rule, subpoena, or order of the board lawfully made pursuant hereto, except as otherwise provided herein, is a class B misdemeanor.

SECTION 10. REPEAL. Sections 43-04-22, 43-04-23, 43-04-28, 43-04-29, and 43-04-34 of the North Dakota Century Code are repealed.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 286

HOUSE BILL NO. 1087

(Industry, Business and Labor Committee)
(At the request of the State Board of Chiropractic Examiners)

AN ACT to create and enact section 43-06-16.1 of the North Dakota Century Code, relating to certified chiropractic clinical assistants; to amend and reenact subdivision hh of subsection 2 of section 12-60-24 and sections 43-06-01, 43-06-04.1, 43-06-07, 43-06-09.1, 43-06-11.1, 43-06-15, and 43-06-19 of the North Dakota Century Code, relating to chiropractic; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁴ **SECTION 1. AMENDMENT.** Subdivision hh of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

hh. The state board of chiropractic examiners for applicants, licensees, certificants, or investigations under chapter 43-06, except that criminal history record checks need not be made unless required by the board.

SECTION 2. AMENDMENT. Section 43-06-01 of the North Dakota Century Code is amended and reenacted as follows:

43-06-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of chiropractic examiners.
2. "Certified chiropractic clinical assistant" means an individual certified by the board who in accordance with section 43-06-16.1 assists with basic health care duties in the practice of chiropractic under the supervision of a licensed doctor of chiropractic in good standing with the board.
3. a. "The practice of chiropractic" includes:
 - a- (1) The examination, evaluation, and diagnosis by means including x-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor or equivalent;
 - b- (2) The treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature;

¹³⁴ Section 12-60-24 was also amended by section 1 of House Bill No. 1060, chapter 94, section 1 of Senate Bill No. 2131, chapter 96, section 7 of Senate Bill No. 2327, chapter 199, section 1 of House Bill No. 1132, chapter 95, and section 1 of Senate Bill No. 2129, chapter 409.

- e- (3) The practice of physiotherapy, electrotherapy, or hydrotherapy;
 - d- (4) All other procedures taught by chiropractic colleges accredited by the council on chiropractic education or its successor; ~~and~~
 - e- (5) The rating and reporting of any permanent impairment of function and the providing of professional opinions regarding any matter included in this definition of practice of chiropractic as set out herein; and
 - (6) Delegation of basic health care duties in the practice of chiropractic to a certified chiropractic clinical assistant.
- b. The practice of chiropractic does not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.

SECTION 3. AMENDMENT. Section 43-06-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-06-04.1. Powers and duties of board.

1. The board shall administer the provisions of this chapter and the administrative rules of the board relating to the practice of chiropractic. It has all powers, rights, and duties as provided in chapter 28-32.
2. The board shall verify the qualifications of applicants for licenses to practice chiropractic and of applicants for certification to practice as a certified chiropractic clinical assistant. It shall examine and renew the licenses or certification of duly qualified applicants.
3. The board shall regulate the practice of chiropractic and shall enforce the provisions of this chapter and the rules of the board. The board shall investigate complaints of violations and cause the prosecution of persons violating the provisions of this chapter or the administrative rules of the board.
4. The board may appoint a peer review committee and employ such personnel and incur such expenses as may be necessary for the performance of the board's duties and the enforcement of this chapter.
5. The board may inspect upon probable cause, at all reasonable times, any chiropractic office or place where chiropractic services are performed.
6. The board may adopt and amend administrative rules, consistent with the provisions of this chapter governing the practice of chiropractic and the diagnosis and treatment of patients, the enforcement of this chapter, and proper performance of its duties, including:
 - a. A code of ethical conduct governing the practice of chiropractic.
 - b. Requirements, standards, and examinations to determine the intellectual, educational, scientific, technical, and professional qualifications of applicants for license or certification.
 - c. Matters pertaining to the content and conduct of examination.

- d. Matters pertaining to the operation and registration of chiropractic facilities.
- e. Matters pertaining to the practice and certification of chiropractic specialties by licensed doctors of chiropractic.
- f. The quantity, type, and character of postgraduate study to be done by any licensee in order to comply with the provisions of this chapter.
- g. Set policies and procedures on what constitutes professional or unprofessional conduct.

SECTION 4. AMENDMENT. Section 43-06-07 of the North Dakota Century Code is amended and reenacted as follows:

43-06-07. Records of the board.

1. The board shall keep a record of all its proceedings and a register of applications for licenses to practice chiropractic showing:
 1. a. The name and location of the institution from which each applicant received the applicant's degree of doctor of chiropractic.
 2. b. The date when the degree of doctor of chiropractic was granted.
 3. c. Whether the applicant was licensed or rejected.
2. The board shall maintain a register of certified chiropractic clinical assistants. The register is prima facie evidence of all matters recorded in the register.

SECTION 5. AMENDMENT. Section 43-06-09.1 of the North Dakota Century Code is amended and reenacted as follows:

43-06-09.1. Conviction not bar to licensure or certification - Exceptions.

Conviction of an offense does not disqualify a person from licensure or certification under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a chiropractor or certified chiropractic clinical assistant, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 6. AMENDMENT. Section 43-06-11.1 of the North Dakota Century Code is amended and reenacted as follows:

43-06-11.1. Criminal history record checks.

The board may require any applicant or licensee, or certificate holder 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, or certificate holder.

SECTION 7. AMENDMENT. Section 43-06-15 of the North Dakota Century Code is amended and reenacted as follows:

43-06-15. Grounds for revocation or suspension of license or other action of the board - Sworn statement - Investigation - Hearing.

1. The board may revoke, suspend, or take such other action as provided in this section regarding the license of any chiropractor in this state who:
 - a. Has a mental or physical condition such that the person is unable to safely engage in the practice of chiropractic.
 - b. Has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision.
 - c. Is suffering from alcoholism or drug addiction which endangers the public by impairing the chiropractor's ability to practice safely.
 - d. Procured the license to practice by fraud or mistake.
 - e. Has engaged in unprofessional or dishonorable conduct, including false or misleading advertising, rendering excessive or inappropriate treatment, or charging unconscionable fees.
 - f. Has been convicted of a crime involving moral turpitude, illegal possession or distribution of drugs, or any crime that would affect the person's ability to practice as a licensed chiropractor. A copy of the record of conviction or plea of guilty or nolo contendere is conclusive evidence.
 - g. Has aided, assisted, or enabled any unlicensed person to practice chiropractic contrary to this chapter or rule of the board.
 - h. Has engaged in the practice of abortion.
 - i. Has made use of any advertising statement of a character tending to deceive or mislead the public.
 - j. Has failed to maintain a chiropractic facility in safe and sanitary conditions.
 - k. Has incurred a suspension or revocation in another jurisdiction as a result of acts similar to acts described in this section or rule of the board. A certified copy of the suspension or revocation in the other jurisdiction is conclusive evidence.
 - l. Has committed any violation of the provisions of this chapter and the code of ethics or rules as adopted by the board, including the failure to submit for physical or mental examination or to provide information as required by the board.
 - m. Has practiced chiropractic while the license to practice was suspended or revoked.
 - n. Has, while under probation, violated its terms.
 - o. Has failed to properly supervise a certified chiropractic clinical assistant or who has delegated duties to a certified chiropractic clinical assistant which are beyond the assistant's education or training or which are beyond the scope of practice of a certified chiropractic clinical assistant.

2. Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a sworn statement and other reports and information to the board under subsection 5 or for otherwise reporting to the board violations or alleged violations under this chapter. The reports are not public records.
3. Members of the board and persons employed by the board or engaged in the investigation or prosecution of violations and in the preparation and management of charges of violations of this chapter on behalf of the board, including members of any peer review committee, are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.
4. A doctor of chiropractic who is the subject of an investigation by, or on behalf of, the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by, or on behalf of, the board relating to the subject of the investigation and providing copies of patient records or any pertinent information requested by the board, to assist the board in its investigation.
5. Any person, including a member of the board, may file a signed written statement and other reports and information with any member of the board against a licensed chiropractor charging the chiropractor with any of the offenses or conditions set forth in subsection 1, which statement must set forth a specification of the charges. When the statement has been filed, the board shall make an investigation as provided by subsection 6.
6. When the statement and other reports and information have been filed, the board shall notify the licensed chiropractor of the allegations and shall thereafter make an investigation for the purpose of determining whether the allegations in the statement constitute a basis for further proceedings. The investigation must be conducted in such manner and at such time and place as in the judgment of the board will best ascertain the facts. The board may appoint a peer review committee. The board, in order to pursue the investigation, has the power to subpoena and examine witnesses and records, including patient records, and to copy, photograph, or take samples. It may require the licensed chiropractor to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and review any relevant medical or psychological records, including test results and x-rays relative to the examination or treatment of the licensed chiropractor. A written request from the board constitutes authorization to release information. The medical or psychological information is not public record.
7. If, based on the investigation or report from a peer review committee, the board has reasonable cause to believe that there is a basis for further proceedings, the board shall prepare a complaint and serve it, along with a notice of hearing, on the licensed chiropractor and thereafter proceed with a hearing on the matter under chapter 28-32. All hearings must be held in Bismarck at the state capitol unless the board and the licensed chiropractor agree otherwise.

8. After the hearing, the board, under section 28-32-39, shall make and give notice of its determination or decision as to whether the offenses charged have been committed or the conditions charged do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:
 - a. Revoke the license;
 - b. Suspend the licensee's right to practice for a period not to exceed one year;
 - c. Suspend its judgment of revocation on terms and conditions determined by the board;
 - d. Place the licensee on probation; or
 - e. Take any other disciplinary action which the board in its discretion considers proper, including the ordering of an adjustment to a patient's bill or refund of such amount previously paid, including reasonable interest from the date of the order, to a patient or payer of any unconscionable fees for chiropractic services.
 - f. In addition to the actions imposed in subdivisions a through e, the board may:
 - (1) Require payment of all costs of proceedings resulting in a disciplinary action.
 - (2) Impose a civil penalty not exceeding ten thousand dollars for each separate violation, to deprive the chiropractor of any economic advantage gained by reason of the violation found and to reimburse the board for the cost of the investigation and proceedings.
9. In cases of revocation, suspension, or probation, the board shall record the facts of the case and all actions of the board.
10. On the expiration of a term of suspension, the licensee must be reinstated by the board if the chiropractor applies to the board and furnishes evidence, satisfactory to the board, that the licensee is then of good character and conduct or restored to good health and that the licensee has not practiced chiropractic during the term of suspension and is competent to practice in this state. If the evidence fails to establish those facts to the satisfaction of the board, the board may require the applicant to submit to an examination in accordance with sections 43-06-08 through 43-06-12 or shall proceed to hearing on revocation with notice as provided in subsection 7.
11. Any licensed chiropractor may take corrective action or voluntarily relinquish the chiropractor's license to the board before a formal order of the board on such terms and conditions as may be agreed by the licensed chiropractor and the board.

SECTION 8. Section 43-06-16.1 of the North Dakota Century Code is created and enacted as follows:

43-06-16.1. Certified chiropractic clinical assistant.

1. A person may not practice as a certified chiropractic clinical assistant or claim to be a chiropractic assistant without certification from the board. The fee for initial certification is fifty dollars. The board may grant a temporary certification to an initial applicant who is waiting for a criminal history background check to be completed. This temporary certification expires automatically upon the applicant receiving a regular certification or being notified the application has been denied.
2. To be certified to practice as a certified chiropractic clinical assistant, an applicant must provide evidence satisfactory to the board the applicant:
 - a. Graduated from high school, or holds a graduate equivalency degree.
 - b. Is at least eighteen years of age.
 - c. Successfully completed the certified chiropractic clinical assistant program and examination by the federation of chiropractic licensing boards. However, applicants for initial certification before March 1, 2018, and who have verified employment of two thousand hours as a chiropractic assistant within the three years before August 1, 2017, and submitted evidence of passing the certified chiropractic clinical assistant examination by the national board of chiropractic examiners via the federation of chiropractic licensing boards, qualify for certification without meeting the coursework requirement of the program.
 - d. Is of good moral character and submits documentation of good moral character as prescribed by the board, including criminal records review.
 - e. Completed an application in a manner and form provided by the board.
 - f. Paid all applicable fees relative to the application process as determined by the board.
 - g. Received practical experience to the extent required to demonstrate competency to safely provide patient care pertinent to the chiropractic office at which the certified chiropractic clinical assistant is employed.
3. A certified chiropractic clinical assistant who is certified in another jurisdiction may apply for certification. The applicant shall provide evidence satisfactory to the board the applicant:
 - a. Has current practice privilege in good standing as a certified chiropractic clinical assistant or equivalent granted by at least one jurisdiction with requirements similar to or greater than the requirement of this board; and
 - b. Presented to the board current documentation that any practice privilege granted by another jurisdiction as a certified chiropractic clinical assistant or equivalent has not been suspended, revoked, or otherwise restricted for any reason except nonrenewal.

4. A minimum examination score of seventy-five percent is required to obtain certification. The examination must be provided by the national board of chiropractic examiners via the federation of chiropractic licensing boards or a board-approved examination.
5. The fee for renewal of the certification is fifty dollars per year. Certificate renewal is March first of every year.
 - a. A certified chiropractic clinical assistant shall obtain six hours of continuing education every two years to renew certification. These hours must be a program approved by providers of approved continuing education, a seminar sponsored by the North Dakota chiropractic association and approved by the board, or a seminar approved for continuing education by another state's board of chiropractic examiners or equivalent. Proof of meeting continuing education requirements must be submitted with the certified chiropractic clinical assistant's renewal application on the even-numbered years after initially receiving certification.
 - b. For an applicant who first receives initial certification between January first and March first, the certification is deemed to be automatically renewed on March first for an additional year without payment of an additional renewal fee.
6. A certified chiropractic clinical assistant must be under the direct supervision of a North Dakota licensed chiropractor in good standing with the board. Direct supervision means the oversight provided by the chiropractor over the clinical services performed by a certified chiropractic clinical assistant, and requires the chiropractor to be on the premises at all times and readily available to instruct the certified chiropractic clinical assistant throughout the performance of the clinical services.
7. The certified chiropractic clinical assistant may assist the chiropractor in patient care involving physiotherapy, electrotherapy, hydrotherapy, chiropractic rehabilitative therapy, administrative processes, and other activities as needed to assist in the practice of chiropractic. The certified chiropractic clinical assistant may perform delegated duties commensurate with the certified chiropractic clinical assistant's education and training, but may not evaluate, interpret, design, or modify established treatment programs of chiropractic care or violate any statute. Certified chiropractic clinical assistants may not participate in clinical decisionmaking, render manipulative chiropractic care, create or change the course of a chiropractic treatment plan, or represent themselves as independent health care providers. A certified chiropractic clinical assistant may not perform medical imaging unless also licensed under chapter 43-62 or upon meeting an exception from that chapter.
8. The board may deny certification of an applicant, or may revoke, suspend, or take other appropriate disciplinary or corrective action regarding the certification of any certified chiropractic clinical assistant who:
 - a. Has a mental or physical condition that renders the individual unable to safely engage in patient care.
 - b. Has been declared incompetent by a court.

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- c. Is suffering from alcoholism or drug addiction that endangers the public by impairing the certified chiropractic clinical assistant's ability to practice safely.
 - d. Procured the certification to practice by fraud or mistake.
 - e. Has engaged in unprofessional or dishonorable conduct.
 - f. Has been convicted of a crime involving moral turpitude which would affect the certified chiropractic clinical assistant's ability to safely engage in patient care.
 - g. Has aided or assisted a noncertified individual to practice as a certified chiropractic clinical assistant.
 - h. Has made advertising statements that are deceiving or misleading to the public.
 - i. Has had disciplinary action taken in another jurisdiction.
 - j. Has committed any violation of regulations regarding chiropractic found in this chapter or rules adopted by the board.
 - k. Has practiced as a certified chiropractic clinical assistant while the certification was suspended or revoked.
 - l. Is found guilty of unprofessional conduct that includes:
 - (1) Willfully harassing, abusing, or intimidating a patient either physically or verbally.
 - (2) Any conduct that has endangered or is likely to endanger the health or safety of the public.
 - (3) Conviction of a crime related to the qualification of a certified chiropractic clinical assistant.
 - (4) Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
 - (5) Conviction of violating any law or regulation concerning the dispensing or administration of narcotics, dangerous drugs, or controlled substances.
 - (6) Knowingly making or signing any false certificates related to the chiropractic care administered.
 - (7) Participation in any act of fraud.
 - (8) Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
 - (9) Delegating professional responsibilities to a person that is not certified to provide the services.

- (10) Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current patient even if the patient attempts to sexualize the relationship, except when the patient is the certified chiropractic clinical assistant's spouse.
9. Disciplinary procedures will be conducted in accordance with chapter 28-32, with the following provisions:
- a. Complaints must be filed and signed in written form or may be considered by the board on its own motion.
 - b. The board shall notify the certified chiropractic clinical assistant and the employer regarding any complaints filed. Full and timely cooperation is required in the investigation.
 - c. The board may appoint a peer review committee at its discretion. The peer review committee has the same authority as a peer review committee appointed under section 43-06-14.1.
 - d. If the board finds probable cause to impose disciplinary action, the board shall prepare a complaint and serve it to the certified chiropractic clinical assistant and employer.
10. Certification is not required for individuals who solely perform administrative activities of a nonclinical nature.

SECTION 9. AMENDMENT. Section 43-06-19 of the North Dakota Century Code is amended and reenacted as follows:

43-06-19. Penalty.

1. Anylt is a class B misdemeanor for any person who fraudulently procures a license to practice chiropractic or who, without complying with the provisions of this chapter:
 - 1- a. Practices or attempts to practice chiropractic;
 - 2- b. Advertises as a chiropractor; or
 - 3- c. Uses the terms or letters, doctor of chiropractic, chiropractor, D.C., chiropractic physician, or any other title that will induce the belief that the person is engaged in the practice of chiropracticis guilty of a class B misdemeanor.
2. It is an infraction for any person that fraudulently procures a certification to practice as a certified chiropractic clinical assistant or that, without complying with the provisions of this chapter:
 - a. Practices or attempts to practice as a certified chiropractic clinical assistant;
 - b. Advertises as a certified chiropractic clinical assistant; or
 - c. Uses the terms or letters certified chiropractic clinical assistant, certified chiropractic clinical assistant, or any other title that will induce the belief

the person is engaged in the practice of chiropractic as a certified chiropractic assistant.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 287

HOUSE BILL NO. 1097

(Human Services Committee)
(At the request of the State Board of Nursing)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the nurse licensure compact; and to amend and reenact section 43-12.1-09.1 of the North Dakota Century Code, relating to criminal history record checks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁵ **SECTION 1. AMENDMENT.** Section 43-12.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09.1. Nursing licensure or registration - Criminal history record checks.

The board shall require each applicant for initial licensure and registration, including applicants for a multistate license under section 2 of this Act, to submit to a statewide and nationwide criminal history record check. The board may require any licensee or registrant who is renewing a license or registration, including renewal of a multistate license under section 2 of this Act, and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09. The board may not share with, or disclose to, the interstate commission of nurse licensure compact administrators any contents of a nationwide criminal history record check.

SECTION 2. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

ARTICLE I - FINDINGS AND DECLARATION OF PURPOSE

1. The party states find that:
 - a. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
 - b. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

¹³⁵ Section 43-12.1-09.1 was also amended by section 1 of House Bill No. 1096, chapter 288.

- c. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;
 - d. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;
 - e. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and
 - f. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.
2. The general purposes of this compact are to:
- a. Facilitate the states' responsibility to protect the public's health and safety;
 - b. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
 - c. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;
 - d. Promote compliance with the laws governing the practice of nursing in each jurisdiction;
 - e. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
 - f. Decrease redundancies in the consideration and issuance of nurse licenses; and
 - g. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE II - DEFINITIONS

As used in this compact:

1. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.
2. "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.
3. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and

enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards.

4. "Current significant investigative information" means:
 - a. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
 - b. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.
5. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.
6. "Home state" means the party state that is the nurse's primary state of residence.
7. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.
8. "Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse issued by a home state licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.
9. "Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse or licensed practical/vocational nurse in a remote state.
10. "Nurse" means registered nurse or licensed practical/vocational nurse, as those terms are defined by each party state's practice laws.
11. "Party state" means any state that has adopted this compact.
12. "Remote state" means a party state, other than the home state.
13. "Single-state license" means a nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.
14. "State" means a state, territory, or possession of the United States and the District of Columbia.
15. "State practice laws" means a party state's laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III - GENERAL PROVISIONS AND JURISDICTION

1. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse or as a licensed practical/vocational nurse, under a multistate licensure privilege, in each party state.
2. A state shall implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.
3. Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:
 - a. Meets the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws;
 - b. (1) Has graduated or is eligible to graduate from a licensing board-approved registered nurse or licensed practical/vocational nurse prelicensure education program; or
(2) Has graduated from a foreign registered nurse or licensed practical/vocational nurse prelicensure education program that:
 - (a) Has been approved by the authorized accrediting body in the applicable country; and
 - (b) Has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;
 - c. Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;
 - d. Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized predecessor, as applicable;
 - e. Is eligible for or holds an active, unencumbered license;
 - f. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records;
 - g. Has not been convicted or found guilty, or has entered an agreed disposition, of a felony offense under applicable state or federal criminal law;

- h. Has not been convicted or found guilty, or has entered an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;
 - i. Is not currently enrolled in an alternative program;
 - j. Is subject to self-disclosure requirements regarding current participation in an alternative program; and
 - k. Has a valid United States social security number.
- 4. All party states may, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it promptly shall notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the home state of any such actions by remote states.
- 5. A nurse practicing in a party state shall comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but includes all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.
- 6. Individuals not residing in a party state continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. This compact does not affect the requirements established by a party state for the issuance of a single-state license.
- 7. Any nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:
 - a. A nurse, who changes primary state of residence after this compact's effective date, shall meet all applicable requirements of subsection 3 of article III to obtain a multistate license from a new home state.
 - b. A nurse who fails to satisfy the multistate licensure requirements in subsection 3 of article III due to a disqualifying event occurring after this compact's effective date is ineligible to retain or renew a multistate license, and the nurse's multistate license must be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("commission").

ARTICLE IV - APPLICATIONS FOR LICENSURE IN A PARTY STATE

- 1. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information

system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

2. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.
3. If a nurse changes primary state of residence by moving between two party states, the nurse shall apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission.
 - a. The nurse may apply for licensure in advance of a change in primary state of residence.
 - b. A multistate license may not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.
4. If a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

ARTICLE V - ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS

1. In addition to the other powers conferred by state law, a licensing board may:
 - a. Take adverse action against a nurse's multistate licensure privilege to practice within that party state.
 - (1) Only the home state has the power to take adverse action against a nurse's license issued by the home state.
 - (2) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.
 - b. Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.
 - c. Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board also may take any appropriate action and promptly shall report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the new home state of any such actions.

- d. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.
 - e. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the federal bureau of investigation record search on criminal background checks, and use the results in making licensure decisions.
 - f. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.
 - g. Take adverse action based on the factual findings of the remote state, if the licensing board follows its own procedures for taking such adverse action.
2. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states must be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.
 3. This compact does not override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE VI - COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE OF INFORMATION

1. All party states shall participate in a coordinated licensure information system of all licensed registered nurses and licensed practical/vocational nurses. This system includes information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.
2. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

3. All licensing boards promptly shall report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.
4. Current significant investigative information and participation in nonpublic or confidential alternative programs must be transmitted through the coordinated licensure information system only to party state licensing boards.
5. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.
6. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.
7. Any information contributed to the coordinated licensure information system which is subsequently required to be expunged by the laws of the party state contributing that information also must be expunged from the coordinated licensure information system.
8. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which must include, at a minimum:
 - a. Identifying information;
 - b. Licensure data;
 - c. Information related to alternative program participation; and
 - d. Other information that may facilitate the administration of this compact, as determined by commission rules.
9. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII - ESTABLISHMENT OF THE INTERSTATE COMMISSION OF NURSE LICENSURE COMPACT ADMINISTRATORS

1. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.
 - a. The commission is an instrumentality of the party states.
 - b. Venue is proper, and judicial proceedings by or against the commission must be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission

may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

c. This compact may not be construed to be a waiver of sovereign immunity.

2. Membership, voting, and meetings.

a. Each party state must have and be limited to one administrator. The head of the state licensing board or designee is the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the party state in which the vacancy exists.

b. Each administrator is entitled to one vote with regard to the promulgation of rules and creation of bylaws and otherwise has an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

c. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws or rules of the commission.

d. All meetings are open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Article VIII.

e. The commission may convene in a closed, nonpublic meeting if the commission discusses:

(1) Noncompliance of a party state with its obligations under this compact;

(2) The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(3) Current, threatened, or reasonably anticipated litigation;

(4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;

(5) Accusing any person of a crime or formally censuring any person;

(6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(7) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(8) Disclosure of investigatory records compiled for law enforcement purposes;

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- (9) Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this compact; or
- (10) Matters specifically exempted from disclosure by federal or state statute.
- f. If a meeting, or portion of a meeting, is 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 exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for the actions taken, including a description of the views expressed. 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 or order of a court of competent jurisdiction.
3. By a majority vote of the administrators, the commission shall prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including:
- a. Establishing the fiscal year of the commission;
- b. Providing reasonable standards and procedures:
- (1) For the establishment and meetings of other committees; and
- (2) Governing any general or specific delegation of any authority or function of the commission;
- c. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole 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 administrator, with no proxy votes allowed;
- d. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;
- e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws exclusively must govern the personnel policies and programs of the commission; and
- f. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the

termination of this compact after the payment or reserving of all of its debts and obligations:

4. The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.
5. The commission shall maintain its financial records in accordance with the bylaws.
6. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
7. The commission may:
 - a. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all party states;
 - b. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law may not be affected;
 - c. Purchase and maintain insurance and bonds;
 - d. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;
 - e. Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space, or other resources;
 - f. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
 - g. Accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same if at all times the commission avoids any appearance of impropriety or conflict of interest;
 - h. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal, or mixed if at all times the commission avoids any appearance of impropriety;
 - i. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;
 - j. Establish a budget and make expenditures;
 - k. Borrow money;

- l. Appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other such interested persons;
 - m. Provide and receive information from, and to cooperate with, law enforcement agencies;
 - n. Adopt and use an official seal; and
 - o. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.
8. Financing of the commission.
 - a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
 - b. The commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.
 - c. The commission may not incur obligations of any kind before securing the funds adequate to meet the same, nor may the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.
 - d. 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.
9. Qualified immunity, defense, and indemnification.
 - a. The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against which the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities. However, this subdivision may not be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.
 - b. The commission shall defend any administrator, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission

that occurred within the scope of commission employment, duties, or responsibilities, or that the person against which the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subdivision may not 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, willful, or wanton misconduct.

- c. The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE VIII - RULEMAKING

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and amendments become binding as of the date specified in each rule or amendment and have the same force and effect as provisions of this compact.
2. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
3. Before the promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
 - a. On the website of the commission; and
 - b. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.
4. The notice of proposed rulemaking must include:
 - a. The proposed time, date, and location of the meeting at which the rule will be considered and voted upon;
 - b. The text of the proposed rule or amendment, and the reason for the proposed rule;
 - c. A request for comments on the proposed rule from any interested person; and
 - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

5. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
6. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.
7. The commission shall publish the place, time, and date of the scheduled public hearing.
 - a. Hearings must be conducted in a manner providing each person that wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy must be made available upon request.
 - b. This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
8. If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. By majority vote of all administrators, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
11. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing. However, the usual rulemaking procedures provided in this compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
 - a. Meet an imminent threat to public health, safety, or welfare;
 - b. Prevent a loss of commission or party state funds; or
 - c. Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.
12. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing, and delivered to the commission before the end of the notice period. If a challenge is not made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE IX - OVERSIGHT, DISPUTE, RESOLUTION AND ENFORCEMENT**1. Oversight.**

- a. Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.**
- b. The commission is entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.**

2. Default, technical assistance, and termination.

- a. If the commission determines a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:**
 - (1) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and**
 - (2) Provide remedial training and specific technical assistance regarding the default.**
- b. If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.**
- c. Termination of membership in this 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 of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.**
- d. A state whose membership in this compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.**
- e. The commission may not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.**
- f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees.**

3. Dispute resolution.

- a. Upon request by a party state, the commission shall attempt to resolve disputes related to the compact which arise among party states and between party and nonparty states.
- b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.
- c. If the commission cannot resolve disputes among party states arising under this compact:
 - (1) The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.
 - (2) The decision of a majority of the arbitrators is final and binding.

4. Enforcement.

- a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
- b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees.
- c. The remedies herein are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE X - EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

1. This compact becomes effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six states or December 31, 2018. All party states to this compact, that also were parties to the prior nurse licensure compact, superseded by this compact, ("prior compact"), are deemed to have withdrawn from said prior compact within six months after the effective date of this compact.
2. Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state has withdrawn from the prior compact.
3. Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal does not take effect until six months after enactment of the repealing statute.

4. A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.
5. This compact may not be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.
6. This compact may be amended by the party states. An amendment to this compact does not become effective and binding upon the party states unless and until it is enacted into the laws of all party states.
7. Representatives of nonparty states to this compact must be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

ARTICLE XI - CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes thereof. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact is held to be contrary to the constitution of any party state, this compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

The term "head of the state licensing board" as used to define the compact administrator in subdivision a of subsection 2 of article VII means the executive director of the state board of nursing.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 288

HOUSE BILL NO. 1096

(Human Services Committee)
(At the request of the State Board of Nursing)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the advanced practice registered nurse licensure compact; and to amend and reenact section 43-12.1-09.1 of the North Dakota Century Code, relating to criminal history record checks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁶ **SECTION 1. AMENDMENT.** Section 43-12.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09.1. Nursing licensure or registration - Criminal history record checks.

The board shall require each applicant for initial licensure and registration, including applicants for a multistate license under section 2 of this Act, to submit to a statewide and nationwide criminal history record check. The board may require any licensee or registrant who is renewing a license or registration, including renewal of a multistate license under section 2 of this Act, and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09. The board may not share with, or disclose to, the interstate commission of nurse licensure compact administrators any contents of a nationwide criminal history record check.

SECTION 2. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

ARTICLE I - FINDINGS AND DECLARATION OF PURPOSE

1. The party states find that:
 - a. The health and safety of the public are affected by the degree of compliance with advanced practice registered nurse licensure requirements and the effectiveness of enforcement activities related to state advanced practice registered nurse licensure laws;
 - b. Violations of advanced practice registered nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

¹³⁶ Section 43-12.1-09.1 was also amended by section 1 of House Bill No. 1097, chapter 287.

- c. The expanded mobility of advanced practice registered nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of advanced practice registered nurse licensure and regulation;
 - d. New practice modalities and technology make compliance with individual state advanced practice registered nurse licensure laws difficult and complex;
 - e. The current system of duplicative advanced practice registered nurse licensure for advanced practice registered nurses practicing in multiple states is cumbersome and redundant for both advanced practice registered nurses and states; and
 - f. Uniformity of advanced practice registered nurse licensure requirements throughout the states promotes public safety and public health benefits.
2. The general purposes of this compact are to:
- a. Facilitate the states' responsibility to protect the public's health and safety;
 - b. Ensure and encourage the cooperation of party states in the areas of advanced practice registered nurse licensure and regulation, including promotion of uniform licensure requirements;
 - c. Facilitate the exchange of information between party states in the areas of advanced practice registered nurse regulation, investigation, and adverse actions;
 - d. Promote compliance with the laws governing advanced practice registered nurse practice in each jurisdiction;
 - e. Invest all party states with the authority to hold an advanced practice registered nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
 - f. Decrease redundancies in the consideration and issuance of advanced practice registered nurse licenses; and
 - g. Provide opportunities for interstate practice by advanced practice registered nurses who meet uniform licensure requirements.

ARTICLE II - DEFINITIONS

As used in this compact:

1. "Advanced practice registered nurse" means a registered nurse who has gained additional specialized knowledge, skills, and experience through a program of study recognized or defined by the Interstate Commission of Advanced Practice Registered Nurse Compact Administrators ("commission"), and who is licensed to perform advanced nursing practice. An advanced practice registered nurse is licensed in an advanced practice registered nurse role that is congruent with an advanced practice registered nurse educational program, certification, and commission rules.

2. "Advanced practice registered nurse licensure" means the regulatory mechanism used by a party state to grant legal authority to practice as an advanced practice registered nurse.
3. "Advanced practice registered nurse uniform licensure requirements" means minimum uniform licensure, education, and examination requirements as adopted by the commission.
4. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an advanced practice registered nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting an advanced practice registered nurse's authorization to practice, including the issuance of a cease and desist action.
5. "Alternative program" means a non-disciplinary monitoring program approved by a licensing board.
6. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on advanced practice registered nurse licensure and enforcement activities related to advanced practice registered nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards.
7. "Current significant investigatory information" means:
 - a. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the advanced practice registered nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
 - b. Investigative information that indicates that the advanced practice registered nurse represents an immediate threat to public health and safety regardless of whether the advanced practice registered nurse has been notified and had an opportunity to respond.
8. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.
9. "Home state" means the party state that is the advanced practice registered nurse's primary state of residence.
10. "Licensing board" means a party state's regulatory body responsible for regulating the practice of advanced practice registered nursing.
11. "Multistate license" means an advanced practice registered nurse license to practice as an advanced practice registered nurse issued by a home state licensing board which authorizes the advanced practice registered nurse to practice as an advanced practice registered nurse in all party states under a multistate licensure privilege, in the same role and population focus as the advanced practice registered nurse is licensed in the home state.

12. "Multistate licensure privilege" means a legal authorization associated with an advanced practice registered nurse multistate license which permits an advanced practice registered nurse to practice as an advanced practice registered nurse in a remote state, in the same role and population focus as the advanced practice registered nurse is licensed in the home state.
13. "Noncontrolled prescription drug" means a device or drug that is not a controlled substance and is prohibited under state or federal law from being dispensed without a prescription. The term includes a device or drug that bears or is required to bear the legend "caution: federal law prohibits dispensing without prescription" or "prescription only" or other legend that complies with federal law.
14. "Party state" means any state that has adopted this compact.
15. "Population focus" means a specific patient population that is congruent with the advanced practice registered nurse educational program, certification, and commission rules.
16. "Prescriptive authority" means the legal authority to prescribe medications and devices as defined by party state laws.
17. "Remote state" means a party state that is not the home state.
18. "Single-state license" means an advanced practice registered nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.
19. "State" means a state, territory, or possession of the United States and the District of Columbia.
20. "State practice laws" means a party state's laws, rules, and regulations that govern advanced practice registered nurse practice, define the scope of advanced nursing practice, including prescriptive authority, and create the methods and grounds for imposing discipline. State practice laws do not include the requirements necessary to obtain and retain an advanced practice registered nurse license, except for qualifications or requirements of the home state.

ARTICLE III - GENERAL PROVISIONS AND JURISDICTION

1. A state must implement procedures for considering the criminal history records of applicants for initial advanced practice registered nurse licensure or advanced practice registered nurse licensure by endorsement. Such procedures must include the submission of fingerprints or other biometric-based information by advanced practice registered nurse applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.
2. By rule, the commission shall adopt the advanced practice registered nurse uniform licensure requirements. The uniform licensure requirements must provide the minimum requirements for advanced practice registered nurse multistate licensure in party states, if the commission may adopt rules

whereby an advanced practice registered nurse, with an unencumbered license on the effective date of this compact, may obtain, by endorsement or otherwise, and retain a multistate license in a party state.

3. In order to obtain or retain a multistate license, an advanced practice registered nurse shall meet, in addition to the uniform licensure requirements, the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable home state laws.
4. By rule, the commission shall identify the approved advanced practice registered nurse roles and population foci for licensure as an advanced practice registered nurse. An advanced practice registered nurse issued a multistate license must be licensed in an approved advanced practice registered nurse role and at least one approved population focus.
5. An advanced practice registered nurse multistate license issued by a home state to a resident in that state will be recognized by each party state as authorizing the advanced practice registered nurse to practice as an advanced practice registered nurse in each party state, under a multistate licensure privilege, in the same role and population focus as the advanced practice registered nurse is licensed in the home state. If an applicant does not qualify for a multistate license, a single-state license may be issued by a home state.
6. Issuance of an advanced practice registered nurse multistate license must include prescriptive authority for noncontrolled prescription drugs, unless the advanced practice registered nurse was licensed by the home state before the home state's adoption of this compact and has not previously held prescriptive authority.
 - a. An advanced practice registered nurse granted prescriptive authority for noncontrolled prescription drugs in the home state may exercise prescriptive authority for noncontrolled prescription drugs in any remote state while exercising a multistate licensure privilege under an advanced practice registered nurse multistate license; the advanced practice registered nurse may not be required to meet any additional eligibility requirements imposed by the remote state in exercising prescriptive authority for noncontrolled prescription drugs.
 - b. Prescriptive authority in the home state for an advanced practice registered nurse who was not granted prescriptive authority at the time of initial licensure by the home state, before the adoption of this compact, must be determined under home state law.
 - c. Prescriptive authority eligibility for an advanced practice registered nurse holding a single-state license must be determined under the law of the licensing state.
7. For each state in which an advanced practice registered nurse seeks authority to prescribe controlled substances, the advanced practice registered nurse shall satisfy all requirements imposed by such state in granting and/or renewing such authority.
8. An advanced practice registered nurse issued a multistate license may assume responsibility and accountability for patient care independent of a supervisory or collaborative relationship with a physician. This authority may

be exercised in the home state and in any remote state in which the advanced practice registered nurse exercises a multistate licensure privilege. For an advanced practice registered nurse issued a single-state license in a party state, the requirement for a supervisory or collaborative relationship with a physician must be determined under applicable party state law.

9. All party states are authorized, in accordance with state due process laws, to take adverse action against an advanced practice registered nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects an advanced practice registered nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it promptly shall notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the home state of any such actions by remote states.
10. An advanced practice registered nurse practicing in a party state shall comply with the state practice laws of the state in which the client is located at the time service is provided. Advanced practice registered nurse practice is not limited to patient care, but includes all advanced nursing practice as defined by the state practice laws of the party state in which the client is located. Advanced practice registered nurse practice in a party state under a multistate licensure privilege subjects the advanced practice registered nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.
11. This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state must be recognized by other party states as satisfying any state law requirement for registered nurse licensure as a precondition for authorization to practice as an advanced practice registered nurse in that state.
12. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state advanced practice registered nurse license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice as an advanced practice registered nurse in any other party state.

ARTICLE IV - APPLICATIONS FOR ADVANCED PRACTICE REGISTERED NURSE LICENSURE IN A PARTY STATE

1. Upon application for an advanced practice registered nurse multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held or is the holder of a licensed practical/vocational nursing license, a registered nursing license, or an advanced practice registered nurse license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

2. An advanced practice registered nurse may hold a multistate advanced practice registered nurse license, issued by the home state, in only one party state at a time.
3. If an advanced practice registered nurse changes primary state of residence by moving between two party states, the advanced practice registered nurse shall apply for advanced practice registered nurse licensure in the new home state, and the multistate license issued by the prior home state must be deactivated in accordance with applicable commission rules.
 - a. The advanced practice registered nurse may apply for licensure in advance of a change in primary state of residence.
 - b. A multistate advanced practice registered nurse license may not be issued by the new home state until the advanced practice registered nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate advanced practice registered nurse license from the new home state.
4. If an advanced practice registered nurse changes primary state of residence by moving from a party state to a nonparty state, the advanced practice registered nurse multistate license issued by the prior home state converts to a single-state license, valid only in the former home state.

ARTICLE V - ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS

1. In addition to the other powers conferred by state law, a licensing board may:
 - a. Take adverse action against an advanced practice registered nurse's multistate licensure privilege to practice within that party state.
 - (1) Only the home state may take adverse action against an advanced practice registered nurse's license issued by the home state.
 - (2) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct that occurred outside of the home state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.
 - b. Issue cease and desist orders or impose an encumbrance on an advanced practice registered nurse's authority to practice within that party state.
 - c. Complete any pending investigations of an advanced practice registered nurse who changes primary state of residence during the course of such investigations. The licensing board also may take any appropriate action and promptly shall report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the new home state of any such actions.

- d. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a party state licensing board for the attendance and testimony of witnesses and/or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing licensing board shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses and/or evidence are located.
 - e. Obtain and submit, for an advanced practice registered nurse licensure applicant, fingerprints or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions.
 - f. If otherwise permitted by state law, recover from the affected advanced practice registered nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that advanced practice registered nurse.
 - g. Take adverse action based on the factual findings of another party state, if the licensing board follows its own procedures for taking such adverse action.
2. If adverse action is taken by a home state against an advanced practice registered nurse's multistate licensure, the privilege to practice in all other party states under a multistate licensure privilege must be deactivated until all encumbrances have been removed from the advanced practice registered nurse's multistate license. All home state disciplinary orders that impose adverse action against an advanced practice registered nurse's multistate license must include a statement that the advanced practice registered nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.
 3. This compact does not override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any advanced practice registered nurse for the duration of the advanced practice registered nurse's participation in an alternative program.

ARTICLE VI - COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE INFORMATION

1. All party states shall participate in a coordinated licensure information system of all advanced practice registered nurses, licensed registered nurses, and licensed practical/vocational nurses. This system includes information on the licensure and disciplinary history of each advanced practice registered nurse, as submitted by party states, to assist in the coordinated administration of advanced practice registered nurse licensure and enforcement efforts.

2. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.
3. All licensing boards promptly shall report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and advanced practice registered nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic and/or confidential under state law.
4. Current significant investigative information and participation in nonpublic or confidential alternative programs must be transmitted through the coordinated licensure information system only to party state licensing boards.
5. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.
6. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.
7. Any information contributed to the coordinated licensure information system which is subsequently required to be expunged by the laws of the party state contributing the information must be removed from the coordinated licensure information system.
8. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which must include, at a minimum:
 - a. Identifying information;
 - b. Licensure data;
 - c. Information related to alternative program participation information; and
 - d. Other information that may facilitate the administration of this compact, as determined by commission rules.
9. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

**ARTICLE VII - ESTABLISHMENT OF THE INTERSTATE COMMISSION OF
ADVANCED PRACTICE REGISTERED NURSE COMPACT ADMINISTRATORS**

1. The party states hereby create and establish a joint public agency known as the interstate commission of advanced practice registered nurse compact administrators.

- a. The commission is an instrumentality of the party states.
 - b. Venue is proper, and judicial proceedings by or against the commission must be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
 - c. This compact may not be construed to be a waiver of sovereign immunity.
2. Membership, voting, and meetings.
- a. Each party state must have and be limited to one administrator. The head of the state licensing board or designee is the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the party state in which the vacancy exists.
 - b. Each administrator is entitled to one vote with regard to the promulgation of rules and creation of bylaws and otherwise must have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.
 - c. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws or rules of the commission.
 - d. All meetings are open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in article VIII.
 - e. The commission may convene in a closed, nonpublic meeting if the commission must discuss:
 - (1) Noncompliance of a party state with its obligations under this compact;
 - (2) The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
 - (3) Current, threatened, or reasonably anticipated litigation;
 - (4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;
 - (5) Accusing any person of a crime or formally censuring any person;
 - (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

- (7) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (8) Disclosure of investigatory records compiled for law enforcement purposes;
 - (9) Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or
 - (10) Matters specifically exempted from disclosure by federal or state statute.
- f. If a meeting, or portion of a meeting, is 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 exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for those actions, including a description of the views expressed. 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 or order of a court of competent jurisdiction.
3. By a majority vote of the administrators, the commission shall prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including:
- a. Establishing the fiscal year of the commission;
 - b. Providing reasonable standards and procedures:
 - (1) For the establishment and meetings of other committees; and
 - (2) Governing any general or specific delegation of any authority or function of the commission;
 - c. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole 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 administrator, with no proxy votes allowed;
 - d. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;
 - e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws

- exclusively govern the personnel policies and programs of the commission; and
- f. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment and/or reserving of all of its debts and obligations.
 4. The commission shall publish its bylaws and rules, and any amendments to the bylaws and rules, in a convenient form on the website of the commission.
 5. The commission shall maintain its financial records in accordance with the bylaws.
 6. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
 7. The commission may:
 - a. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all party states;
 - b. Bring and prosecute legal proceedings or actions in the name of the commission. However, the standing of any licensing board to sue or be sued under applicable law may not be affected;
 - c. Purchase and maintain insurance and bonds;
 - d. Borrow, accept, or contract for services of personnel, including employees of a party state or nonprofit organizations;
 - e. Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space, or other resources;
 - f. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
 - g. Accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. However, at all times the commission shall strive to avoid any appearance of impropriety and/or conflict of interest;
 - h. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal, or mixed. However, at all times the commission shall strive to avoid any appearance of impropriety;
 - i. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

- j. Establish a budget and make expenditures;
 - k. Borrow money;
 - l. Appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators, or their representatives, and consumer representatives, and other such interested persons;
 - m. Provide and receive information from, and to cooperate with, law enforcement agencies;
 - n. Adopt and use an official seal; and
 - o. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of advanced practice registered nurse licensure and practice.
8. Financing of the commission.
- a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
 - b. The commission may levy on and collect an annual assessment from each party state to cover the cost of the operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.
 - c. The commission may not incur obligations of any kind before securing the funds adequate to meet the same, nor may the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.
 - d. 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.
9. Qualified immunity, defense, and indemnification.
- a. The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against which the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. However, this subdivision may not be construed to protect any such person from suit and/or liability for any damage, loss, injury, or

- liability caused by the intentional, willful, or wanton misconduct of that person.
- b. The commission shall defend any administrator, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against which 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 the actual or alleged act, error, or omission may not result from that person's intentional, willful, or wanton misconduct.
 - c. The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE VIII - RULEMAKING

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments become binding as of the date specified in each rule or amendment and have the same force and effect as provisions of this compact.
2. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
3. Before promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

 - a. On the website of the commission; and
 - b. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.
4. The notice of proposed rulemaking must include:

 - a. The proposed time, date, and location of the meeting at which the rule will be considered and voted upon;
 - b. The text of the proposed rule or amendment, and the reason for the proposed rule;
 - c. A request for comments on the proposed rule from any interested person; and

- d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.
5. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
6. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.
7. The commission shall publish the place, time, and date of the scheduled public hearing.
 - a. Hearings must be conducted in a manner providing each person that wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings must be recorded, and a copy must be made available upon request.
 - b. This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
8. If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. By majority vote of all administrators, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
11. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing. However, the usual rulemaking procedures provided in this compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
 - a. Meet an imminent threat to public health, safety, or welfare;
 - b. Prevent a loss of commission or party state funds; or
 - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.
12. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision may be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a

material change to a rule. A challenge must be made in writing, and delivered to the commission, before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE IX - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

1. Oversight.

- a. Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.
- b. The commission is entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.

2. Default, technical assistance, and termination.

- a. If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
 - (1) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the commission; and
 - (2) Provide remedial training and specific technical assistance regarding the default.
- b. If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- c. Termination of membership in this compact must 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 of the defaulting state and to the executive officer of the defaulting state's licensing board, the defaulting state's licensing board, and each of the party states.
- d. A state whose membership in this compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
- e. The commission may not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated, unless agreed upon in writing between the commission and the defaulting state.

- f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party must be awarded all costs of such litigation, including reasonable attorneys' fees.
3. Dispute resolution.
- a. Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.
- b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.
- c. If the commission cannot resolve disputes among party states arising under this compact:
- (1) The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.
- (2) The decision of a majority of the arbitrators is final and binding.
4. Enforcement.
- a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
- b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including reasonable attorneys' fees.
- c. The remedies herein are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE X - EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

1. This compact comes into limited effect at such time as this compact has been enacted into law in ten party states for the sole purpose of establishing and convening the commission to adopt rules relating to its operation and the advanced practice registered nurse uniform licensure requirements.
2. On the date of the commission's adoption of the advanced practice registered nurse uniform licensure requirements, all remaining provisions of this compact, and rules adopted by the commission, come into full force and effect in all party states.

3. Any state that joins this compact after the commission's initial adoption of the advanced practice registered nurse uniform licensure requirements are subject to all rules that have been previously adopted by the commission.
4. Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal does not take effect until six months after enactment of the repealing statute.
5. A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring before the effective date of such withdrawal or termination.
6. This compact may not be construed to invalidate or prevent any advanced practice registered nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that does not conflict with the provisions of this compact.
7. This compact may be amended by the party states. An amendment to this compact does not become effective and binding upon any party state until it is enacted into the laws of all party states.
8. Representatives of nonparty states to this compact must be invited to participate in the activities of the commission, on a nonvoting basis, before the adoption of this compact by all states.

ARTICLE XI - CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes of this compact. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby. If this compact is held to be contrary to the constitution of any party state, this compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 289

HOUSE BILL NO. 1289

(Representative Keiser)

AN ACT to amend and reenact subsection 1 of section 23-34-04 and section 43-17-31 of the North Dakota Century Code, relating to grounds for disciplinary action by the medical board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-34-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A peer review organization shall report to an investigative panel of the North Dakota board of medicine any information that indicates a probable violation of ~~subsection 4, 5, 16, or 17~~ subdivision d, e, p, or q of subsection 1 of section 43-17-31.

SECTION 2. AMENDMENT. Section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

43-17-31. Grounds for disciplinary action.

1. Disciplinary action may be imposed against a physician upon any of the following grounds:
 1. 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.
 2. b. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
 3. c. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
 4. d. Habitual use of alcohol or drugs.
 5. e. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
 6. f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
 7. g. Obtaining any fee by fraud, deceit, or misrepresentation.
 8. h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.

9. i. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
10. j. The practice of medicine under a false or assumed name.
11. k. The advertising for the practice of medicine in an untrue or deceptive manner.
12. l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
13. m. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
14. n. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
15. o. Gross negligence in the practice of medicine.
16. p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
17. q. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
18. r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
19. s. The failure to comply with the reporting requirements of section 43-17.1-05.1.
20. t. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.
21. u. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
22. v. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
23. w. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

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24. x. The violation of any state or federal statute or regulation relating to controlled substances.
25. y. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that 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.
26. z. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
27. aa. The failure to properly monitor a physician assistant, a fluoroscopy technologist, or an emergency medical technician.
28. bb. The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.
29. cc. The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 14-02.1-05.1.
- dd. Noncompliance with the physician health program established under chapter 43-17.3.
2. The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 290

HOUSE BILL NO. 1306

(Representatives Beadle, Boschee, Kading, Vetter)
(Senators Meyer, Roers)

AN ACT to amend and reenact section 43-23-02 of the North Dakota Century Code, relating to the real estate commission; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-02 of the North Dakota Century Code is amended and reenacted as follows:

43-23-02. Commission - Term - Duties - Records.

The governor shall appoint each member of the commission for a term of five years. Terms must be staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor shall appoint a successor for a term of five years. A commissioner may not serve more than two consecutive five-year terms. In the event of a vacancy on the commission for any reason the governor shall appoint a member for the unexpired term of that member.

A majority of the commission, in a duly assembled meeting, may perform and exercise all of the duties and powers devolving on the commission. 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 adopt a seal with North Dakota real estate commission engraved on the seal, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of such commission, must be received in evidence in all courts equally and with like effect as the original.

SECTION 2. APPLICATION. This Act applies to state real estate commission appointments of members which take place after July 31, 2017. This Act does not invalidate the current term of a member serving on the commission on August 1, 2017.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 291

HOUSE BILL NO. 1157

(Representatives B. Koppelman, D. Anderson, Roers Jones, Schneider)
(Senators Grabinger, Kreun, J. Lee)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the physical therapy licensure compact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

ARTICLE I - PURPOSE

The purpose of this compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
2. Enhance the states' ability to protect the public's health and safety;
3. Encourage the cooperation of member states in regulating multistate physical therapy practice;
4. Support spouses of relocating military members;
5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and
6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

ARTICLE II - DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions apply:

1. "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. sections 1209 and 1211.

2. "Adverse action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.
3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes substance abuse issues.
4. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter.
5. "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, educational and professional activities relevant to practice or area of work.
6. "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.
7. "Encumbered license" means a license that a physical therapy licensing board has limited in any way.
8. "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
9. "Home state" means the member state that is the licensee's primary state of residence.
10. "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.
11. "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.
12. "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.
13. "Member state" means a state that has enacted the compact.
14. "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.
15. "Physical therapist" means an individual who is licensed by a state to practice physical therapy.
16. "Physical therapist assistant" means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.

17. "Physical therapy", "physical therapy practice", and "the practice of physical therapy" mean the care and services provided by or under the direction and supervision of a licensed physical therapist.
18. "Physical therapy compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.
19. "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.
20. "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.
21. "Rule" means a regulation, principle, or directive promulgated by the commission which has the force of law.
22. "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

ARTICLE III - STATE PARTICIPATION IN THE COMPACT

1. To participate in the compact, a state must:
 - a. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;
 - b. Have a mechanism in place for receiving and investigating complaints about licensees;
 - c. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;
 - d. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions in accordance with subsection 2;
 - e. Comply with the rules of the commission;
 - f. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and
 - g. Have continuing competence requirements as a condition for license renewal.
2. Upon adoption of this statute, the member state may obtain biometric-based information from each physical therapy licensure applicant and submit this information to the federal bureau of investigation for a criminal background check in accordance with 28 U.S.C. section 534 and 42 U.S.C. section 14616.
3. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

4. Member states may charge a fee for granting a compact privilege.

ARTICLE IV - COMPACT PRIVILEGE

1. To exercise the compact privilege under the terms and provisions of the compact, the licensee shall:
 - a. Hold a license in the home state;
 - b. Have no encumbrance on any state license;
 - c. Be eligible for a compact privilege in any member state in accordance with subsections 4, 7, and 8;
 - d. Have not had any adverse action against any license or compact privilege within the previous two years;
 - e. Notify the commission the licensee is seeking the compact privilege within a remote state;
 - f. Pay any applicable fees, including any state fee, for the compact privilege;
 - g. Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and
 - h. Report to the commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.
2. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of subsection 1 to maintain the compact privilege in the remote state.
3. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.
4. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.
5. If a home state license is encumbered, the licensee loses the compact privilege in any remote state until the following occur:
 - a. The home state license is no longer encumbered; and
 - b. Two years have elapsed from the date of the adverse action.
6. Once an encumbered license in the home state is restored to good standing, the licensee shall meet the requirements of subsection 1 to obtain a compact privilege in any remote state.
7. If a licensee's compact privilege in any remote state is removed, the individual loses the compact privilege in any remote state until the following occur:

- a. The specific period of time for which the compact privilege was removed has ended;
 - b. All fines have been paid; and
 - c. Two years have elapsed from the date of the adverse action.
8. Once the requirements of subsection 7 have been met, the licensee shall meet the requirements in subsection 1 to obtain a compact privilege in a remote state.

ARTICLE V - ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

1. Home of record;
2. Permanent change of station; or
3. State of current residence if it is different from the permanent change of station state or home of record.

ARTICLE VI - ADVERSE ACTIONS

1. A home state has the exclusive power to impose adverse action against a license issued by the home state.
2. A home state may take adverse action based on the investigative information of a remote state, if the home state follows its own procedures for imposing adverse action.
3. This compact does not override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation must remain nonpublic if required by the member state's laws. Member states shall require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.
4. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.
5. A remote state may:
 - a. Take adverse actions as set forth in subsection 4 of article IV against a licensee's compact privilege in the state;
 - b. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state, must be enforced in the latter state by any court of competent jurisdiction, according to the practice and

procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

c. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

6. Joint investigations.

a. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

b. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

**ARTICLE VII - ESTABLISHMENT OF THE PHYSICAL
THERAPY COMPACT COMMISSION**

1. The compact member states hereby create and establish a joint public agency known as the physical therapy compact commission:

a. The commission is an instrumentality of the compact states.

b. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

c. This compact may not be construed to be a waiver of sovereign immunity.

2. Membership, voting, and meetings.

a. Each member state is limited to one delegate selected by that member state's licensing board.

b. The delegate must be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

c. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

d. The member state board shall fill any vacancy occurring in the commission.

e. Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

- f. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
 - g. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
3. The commission shall have the following powers and duties:
- a. Establish the fiscal year of the commission;
 - b. Establish bylaws;
 - c. Maintain its financial records in accordance with the bylaws;
 - d. Meet and take such actions as are consistent with the provisions of this compact and the bylaws;
 - e. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all member states;
 - f. Bring and prosecute legal proceedings or actions in the name of the commission, provided the standing of any state physical therapy licensing board to sue or be sued under applicable law may not be affected;
 - g. Purchase and maintain insurance and bonds;
 - h. Borrow, accept, or contract for services of personnel, including employees of a member state;
 - i. Hire employees; elect or appoint officers; fix compensation; define duties; grant such individuals appropriate authority to carry out the purposes of the compact; and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
 - j. 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;
 - k. 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;
 - l. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
- m. Establish a budget and make expenditures;
- n. Borrow money;
- o. Appoint committees, including standing committees comprised of members, state regulators, state legislators or their representatives, and

- consumer representatives, and such other interested persons as may be designated in this compact and the bylaws:
- p. Provide and receive information from, and cooperate with, law enforcement agencies;
 - q. Establish and elect an executive board; and
 - r. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of physical therapy licensure and practice.
4. The executive board may act on behalf of the commission according to the terms of this compact:
- a. The executive board must be comprised of nine members:
 - (1) Seven voting members who are elected by the commission from the current membership of the commission;
 - (2) One ex officio, nonvoting member from the recognized national physical therapy professional association; and
 - (3) One ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.
 - b. The ex officio members are selected by their respective organizations.
 - c. The commission may remove any member of the executive board as provided in bylaws.
 - d. The executive board shall meet at least annually.
 - e. The executive board shall:
 - (1) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;
 - (2) Ensure compact administration services are appropriately provided, contractual or otherwise;
 - (3) Prepare and recommend the budget;
 - (4) Maintain financial records on behalf of the commission;
 - (5) Monitor compact compliance of member states and provide compliance reports to the commission;
 - (6) Establish additional committees as necessary; and
 - (7) Other duties as provided in rules or bylaws.
5. Meetings of the commission.

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- a. All meetings are open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in article IX.
 - b. The commission or the executive board or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive board or other committees of the commission must discuss:
 - (1) Noncompliance of a member state with its obligations under the compact;
 - (2) The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
 - (3) Current, threatened, or reasonably anticipated litigation;
 - (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
 - (5) Accusing any person of a crime or formally censuring any person;
 - (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
 - (7) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (8) Disclosure of investigative records compiled for law enforcement purposes;
 - (9) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or
 - (10) Matters specifically exempted from disclosure by federal or member state statute.
 - c. If a meeting, or portion of a meeting, is 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 exempting provision.
 - d. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.
6. Financing of the commission.

- a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
 - b. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
 - c. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.
 - d. The commission may not incur obligations of any kind before securing the funds adequate to meet the same, nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.
 - e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.
7. Qualified immunity, defense, and indemnification.
- a. The members, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in this subdivision may be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.
 - b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided this subdivision may not 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, willful, or wanton misconduct.

- c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE VIII - DATA SYSTEM

1. The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.
2. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:
 - a. Identifying information;
 - b. Licensure data;
 - c. Adverse actions against a license or compact privilege;
 - d. Nonconfidential information related to alternative program participation;
 - e. Any denial of application for licensure, and the reason for such denial; and
 - f. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.
3. Investigative information pertaining to a licensee in any member state will only be available to other party states.
4. The commission promptly shall notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state is available to any other member state.
5. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.
6. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

ARTICLE IX - RULEMAKING

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and

- amendments become binding as of the date specified in each rule or amendment.
2. If a majority of the legislatures of the member states reject a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, then such rule has no further force and effect in any member state.
 3. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
 4. Before promulgation and adoption of a final rule or rules by the commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
 - a. On the website of the commission or other publicly accessible platform; and
 - b. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.
 5. The notice of proposed rulemaking must include:
 - a. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
 - b. The text of the proposed rule or amendment and the reason for the proposed rule;
 - c. A request for comments on the proposed rule from any interested persons; and
 - d. The manner in which interested persons may submit notice to the commission of the interested persons' intentions to attend the public hearing and any written comments.
 6. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
 7. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:
 - a. At least twenty-five persons;
 - b. A state or federal governmental subdivision or agency; or
 - c. An association having at least twenty-five members.
 8. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

- a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
 - b. Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
 - c. All hearings must be recorded. A copy of the recording must be made available on request.
 - d. This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. If written notice of intent to attend the public hearing by interested parties is not received, the commission may proceed with promulgation of the proposed rule without a public hearing.
11. By majority vote of all members, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
12. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
 - a. Meet an imminent threat to public health, safety, or welfare;
 - b. Prevent a loss of commission or member state funds;
 - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
 - d. Protect public health and safety.
13. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds the revision results in a material change to a rule. A challenge must be made in writing, and delivered to the chair of the commission before the end of the notice period. If a challenge is not made, the revision takes

effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE X - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

1. Oversight.

- a. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory law.**
- b. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.**
- c. The commission is entitled to receive service of process in any such proceeding, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.**

2. Default, technical assistance, and termination.

- a. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:**
 - (1) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the commission; and**
 - (2) Provide remedial training and specific technical assistance regarding the default.**
- b. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.**
- c. Termination of membership in the compact must 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 of the member states.**
- d. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.**

- e. The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.
 - f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of such litigation, including reasonable attorney's fees.
3. Dispute resolution.
 - a. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact which arise among member states and between member and nonmember states.
 - b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.
 4. Enforcement.
 - a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
 - b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney's fees.
 - c. The remedies herein are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

**ARTICLE XI - DATE OF IMPLEMENTATION OF THE INTERSTATE
COMMISSION FOR PHYSICAL THERAPY PRACTICE AND
ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT**

1. The compact comes into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.
2. Any state that joins the compact after the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.
3. Any member state may withdraw from this compact by enacting a statute repealing the same.

- a. A member state's withdrawal does not take effect until six months after enactment of the repealing statute.
- b. Withdrawal does not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this compact before the effective date of withdrawal.
4. This compact may not be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state which does not conflict with the provisions of this compact.
5. This compact may be amended by the member states. An amendment to this compact may not become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE XII - CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the remainder of this compact to any government, agency, person, or circumstance is not affected thereby. If this compact is held contrary to the constitution of any party state, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 292

HOUSE BILL NO. 1035

(Legislative Management)
(Health Services Committee)

AN ACT to amend and reenact sections 43-28.1-07 and 43-28.1-08 of the North Dakota Century Code, relating to the dentist loan repayment program; to repeal section 43-28.1-06 of the North Dakota Century Code, relating to breach of the dentist loan repayment program; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-28.1-07 of the North Dakota Century Code is amended and reenacted as follows:

43-28.1-07. Release from ~~contract~~ Contract obligation.

1. The state health council shall release ~~a dentist from the dentist's loan repayment contract, without penalty, if:~~
 - a. ~~The dentist has completed the service requirements of the contract;~~
 - b. ~~The dentist is unable to complete the service requirement of the contract because of a permanent physical disability;~~
 - c. ~~The dentist demonstrates to the state health council extreme hardship or shows other good cause justifying the release; or~~
 - d. ~~The dentist dies.~~
2. ~~A decision by the state health council not to release a dentist from the dentist's loan repayment contract without penalty is reviewable by district court~~enter a contract with a selected dentist. The contract must provide the state health council agrees to make payments of loan repayment funds to the selected dentist, subject to the dentist meeting the requirements and limitations established by the state health council under this chapter.

SECTION 2. AMENDMENT. Section 43-28.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-28.1-08. Payment - Termination.

1. The state health council may not provide any loan repayment funds to a dentist under this chapter until the dentist has practiced at least six months on a full-time basis in the city or surrounding areas, or both, the state health council has identified as having a defined need for dental services. ~~Loan repayment funds for a year of obligated service are payable by the state health council no later than the end of the fiscal year in which the dentist completes the year of obligated service.~~

2. Except as otherwise provided, the state health council shall make payments under this chapter at the conclusion of each of the five twelve-month periods of service during which the dentist met the qualifying terms of the contract. The state health council may make a prorated payment under this chapter if during the twelve-month period the dentist failed to meet the qualifying terms of the contract.
3. Payments under this chapter terminate upon the earlier of completion of five years as a participant in this loan repayment program or failure of the dentist to meet the qualifying terms under the contract.

SECTION 3. REPEAL. Section 43-28.1-06 of the North Dakota Century Code is repealed.

SECTION 4. APPLICATION. In the case of a dental student loan repayment contract under chapter 43-28.1 which was entered before the effective date of this Act, the state health council and that dentist may amend the terms of the contract to comply with this Act.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 293

HOUSE BILL NO. 1093

(Industry, Business and Labor Committee)
(At the request of the State Board of Respiratory Care)

AN ACT to amend and reenact subsection 10 of section 43-42-01 and sections 43-42-03 and 43-42-05 of the North Dakota Century Code, relating to respiratory care and polysomnographic licensure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 43-42-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the ~~cardiorespiratory~~cardiopulmonary systems. Respiratory care is implemented on an order from a licensed physician, certified nurse practitioner, or physician's assistant and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, pulmonary rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and artificial airways, and insertion of artificial airways. The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.

SECTION 2. AMENDMENT. Section 43-42-03 of the North Dakota Century Code is amended and reenacted as follows:

43-42-03. Respiratory therapist and polysomnographic technologist licensing - Fees.

1. The board shall license as a registered respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a registered respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. The board shall establish fees not in excess of one hundred dollars for the issuance and renewal of a registered respiratory therapist license.
2. The board shall license as a certified respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a certified respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. The board shall establish fees not in excess of ninety dollars for the issuance and renewal of a certified respiratory therapist license.

3. The board shall license as a registered polysomnographic technologist any applicant whom the board determines to be qualified to perform the duties of a registered polysomnographic technologist. In making this determination, the board shall require evidence that the applicant has complied with the rules adopted by the board under section 43-42-04.1. The board shall establish fees not in excess of ninety dollars for issuance and for renewal of a registered polysomnographic technologist license.
4. The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.
5. The board shall refuse to license any applicant or, shall suspend or revoke any license, or may fine, require additional education or appropriate treatment for any licensee, after proper notice and a hearing, if the applicant or licensee:
 - a. Is not qualified or competent to perform the duties of a registered respiratory therapist, a certified respiratory therapist, or a registered polysomnographic technologist.
 - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
 - c. Has been found by the board to have been grossly negligent as a registered respiratory therapist, certified respiratory therapist, or registered polysomnographic technologist.
 - d. Has engaged in conduct as a registered respiratory therapist, certified respiratory therapist, or registered polysomnographic technologist which is unethical, unprofessional, or detrimental to the health of the public.
 - e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
 - f. Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care or polysomnography and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
 - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
 - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
6. The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, which are not reversed on appeal, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.
7. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by

the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board.

8. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

SECTION 3. AMENDMENT. Section 43-42-05 of the North Dakota Century Code is amended and reenacted as follows:

43-42-05. Application of chapter.

1. This chapter does not prohibit a person enrolled in a bona fide respiratory care training program from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under the supervision or direction of a physician or registered respiratory therapist and the person is identified as a "student respiratory therapist".
2. If examinations prepared by the national board for respiratory care are no longer available or become unacceptable to the board, the board may develop, approve, and use examinations for the licensure of registered respiratory therapists and certified respiratory therapists.
3. This chapter does not prevent a licensed and qualified member of another health care profession from performing any of the duties of a registered respiratory therapist ~~or~~, a certified respiratory therapist, or a registered polysomnographic technologist that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory therapist ~~or~~, certified respiratory therapist, or registered polysomnographic technologist.
4. This chapter does not prohibit self-care by a patient or the gratuitous care by a friend or member of the family who does not represent or hold out to be a registered or certified respiratory therapist.
5. This chapter does not prohibit a ~~respiratory therapist licensee under this chapter~~ from performing advances in the art or techniques of ~~respiratory care~~ the licensee's licensed profession learned through formal or specialized training.
6. This chapter does not prohibit an individual licensed or registered as a respiratory therapist in another state or country from providing respiratory care in an emergency in this state, providing respiratory care as a member of an organ harvesting team, or from providing respiratory care on board an ambulance as part of the ambulance treatment team.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 294

HOUSE BILL NO. 1237

(Representative Owens)
(Senator Burckhard)

AN ACT to amend and reenact section 43-55-05 of the North Dakota Century Code, relating to professional employer organization bonding requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-55-05 of the North Dakota Century Code is amended and reenacted as follows:

43-55-05. Bond.

1. A professional employer organization shall maintain a bond with a minimum value of the ~~greater~~lesser amount of one hundred thousand dollars or five percent of the total wages reported on the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state ~~but not to exceed five hundred thousand dollars.~~
2. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount of one hundred thousand dollars.
3. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.
4. ~~Notice~~A professional employer organization shall provide the secretary of state notice of cancellation or nonrenewal of the ~~surety~~ bond required by this section ~~shall be provided to the secretary of state~~ at least forty-five days before cancellation or nonrenewal of the bond.
5. As used in this section, "bond" means a surety bond or an irrevocable letter of credit.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 295

SENATE BILL NO. 2198

(Senators J. Lee, Dever)
(Representatives Beadle, Weisz)

AN ACT to amend and reenact sections 43-62-01, 43-62-02, 43-62-03, 43-62-04, 43-62-08, 43-62-09, 43-62-11, 43-62-14, 43-62-15, and 43-62-18, and subsections 7 and 13 of section 43-62-19 of the North Dakota Century Code, relating to the regulation of medical imaging and radiation therapy; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁷ **SECTION 1. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

43-62-01. Definitions.

As used in this chapter:

1. "Board" means the North Dakota medical imaging and radiation therapy board ~~of examiners.~~
2. "Certification organization" means a national certification organization that specializes in the certification and registration of ~~certification~~ of medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, ~~surgeon~~, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy ~~procedures~~ and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, ~~or sonographer,~~ or magnetic resonance imaging technologist.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including magnetic resonance imaging, fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in

¹³⁷ Section 43-62-01 was also amended by section 51 of Senate Bill No. 2327, chapter 199.

nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.

7. "Primary modality" means an individual practicing as a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, sonographer, or magnetic resonance imaging technologist.
8. "Protected health information" has the same meaning as provided under section 23-01.3-01.
9. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.
- 8-10. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy an individual, other than a licensed practitioner or authorized user, who performs procedures and operate applies ionizing radiation therapy equipment emitted from x-ray machines, particle accelerators, or sealed radioactive sources to human beings for therapeutic purposes.

SECTION 2. AMENDMENT. Section 43-62-02 of the North Dakota Century Code is amended and reenacted as follows:

43-62-02. License required.

~~After December 31, 2015, an~~An individual may not perform or offer to perform medical imaging or radiation therapy procedures on humans for diagnostic or therapeutic purposes as defined in this chapter or otherwise indicate or imply that the individual is licensed to perform medical imaging or radiation therapy unless that individual is licensed under this chapter.

¹³⁸ **SECTION 3. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

43-62-03. Exemptions.

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer, or magnetic resonance imaging technologist holding a license in the medical imaging or radiation therapy modality for which the student is enrolled or attending ~~under this chapter.~~

¹³⁸ Section 43-62-03 was also amended by section 52 of Senate Bill No. 2327, chapter 199.

4. An individual administering medical imaging or radiation ~~procedures~~therapy and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.
6. A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.
7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
8. Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3.

SECTION 4. AMENDMENT. Section 43-62-04 of the North Dakota Century Code is amended and reenacted as follows:

43-62-04. North Dakota medical imaging and radiation therapy board of examiners.

1. The governor shall appoint a ~~state board of~~North Dakota medical imaging and radiation therapy ~~medical examiners board~~ consisting of nine members including:
 - a. Five medical imaging or radiation therapy professionals, ~~one each from~~chosen to represent the areas of radiography, radiation therapy, nuclear medicine technology, sonography, magnetic resonance imaging, and medical imaging or radiation therapy education;
 - b. One radiologist;
 - c. One medical physicist;
 - d. One physician from a rural area; and
 - e. One public member.
2. Each medical imaging or radiation therapy member of the board must:
 - a. Be a practicing medical imaging or radiation therapy licensee of integrity and ability.
 - b. Be a resident of and currently licensed pursuant to subsection 2 of section 43-62-14 in the member's ~~medical imaging or radiation therapy~~primary modality in this state.
 - c. Be currently certified by a ~~nationally recognized~~ certification organization in the member's ~~medical imaging or radiation therapy~~primary modality.
 - d. Have been engaged in the active practice of the medical imaging or radiation therapy 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.
4. The radiologist, medical physicist, and physician members of the board must:
 - a. Be a practicing radiologist, medical physicist, or physician of integrity and ability.
 - b. Be a resident of and be licensed to practice as a physician or registered as a medical physicist in this state.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 5. AMENDMENT. Section 43-62-08 of the North Dakota Century Code is amended and reenacted as follows:

43-62-08. Meetings of the board.

The board shall hold at least two meetings each year to conduct business and to review the standards and rules for improving the administration of medical imaging or radiation therapy procedures. The board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of board members constitutes a quorum.

SECTION 6. AMENDMENT. Section 43-62-09 of the North Dakota Century Code is amended and reenacted as follows:

43-62-09. Powers of the board.

In addition to any other powers, the board may:

1. Administer this chapter.
2. Issue interpretations of this chapter.
3. Adopt rules as may be necessary to carry out this chapter.
4. Employ and fix the compensation of personnel the board determines necessary to carry into effect this chapter and incur other expenses necessary to effectuate this chapter.
5. Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this chapter.
6. Set fees for licensure, license renewal, and other services deemed necessary to carry out the purposes of this chapter.
7. Conduct investigations for the purpose of determining whether violations of this chapter or grounds for disciplining licensees exist. The board may

establish an investigative panel to conduct an investigation under this subsection and may subpoena records.

8. Develop standards and adopt rules for the improvement of the administration of medical imaging or radiation therapy procedures in this state.
9. Employ or contract with one or more certification organizations known to provide acceptable examinations leading to certification of technical personnel performing medical imaging or radiation therapy procedures.
10. Impose sanctions, deny licensure, levy fines, or seek appropriate civil or criminal penalties against anyone who violates or attempts to violate examination security, anyone who obtains or attempts to obtain licensure by fraud or deception, or anyone who knowingly assists in that type of activity.
11. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, licensing and disciplinary authorities of other jurisdictions, certification organizations, professional education and training institutions, liability insurers, health care institutions, or other employers, and law enforcement agencies be reported to the board. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with the criminal history record check are the responsibility of the licensee or applicant.
12. Require the self-reporting by an applicant or a licensee of any information the board determines may indicate possible deficiencies in practice, performance, fitness, or qualifications.
13. Establish a mechanism for dealing with a licensee who abuses or is dependent upon or addicted to alcohol or other addictive chemical substances, and enter an agreement with a professional organization possessing relevant procedures and techniques the board has evaluated and approved for the organization's cooperation or participation.
14. Issue a cease and desist order, obtain a court order, or an injunction to halt unlicensed practice, a violation of this chapter, or a violation of the rules of the board.
15. Issue a conditional, restricted, or otherwise circumscribed license as the board determines necessary.

SECTION 7. AMENDMENT. Section 43-62-11 of the North Dakota Century Code is amended and reenacted as follows:

43-62-11. Records of the board.

The board shall keep a record of its proceedings and applications for licensure. An application record must be preserved for at least six years beyond the disposition of the application or the last annual registration of the licensee, whichever is later. Protected health information in the possession of the board is an exempt record.

SECTION 8. AMENDMENT. Section 43-62-14 of the North Dakota Century Code is amended and reenacted as follows:

43-62-14. License requirements.

1. The board ~~may~~shall issue a license to ~~any~~any qualified applicant ~~who has submitted. To qualify for licensure, an applicant shall comply with the modality licensure requirements under subsection 2, 3, 4, or 7, comply with board requirements adopted by rules, and submit~~ satisfactory evidence, verified by oath or affirmation, that the applicant:
 - a. At the time of the application is at least eighteen years of age.
 - b. Has successfully completed a four-year course of study in a ~~secondary~~high school approved by the state board of higher education or passed an approved equivalency test.
2. ~~In addition to the requirements of subsection 1~~To qualify for licensure to practice one or more of the primary modalities as a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, sonographer, or magnetic resonance imaging technologist, an individual seeking to obtain a license applicant shall meet the requirements for ~~at the applicable~~ specific modality of medical imaging or radiation therapy shall comply with the following requirements, including:
 - a. Provide satisfactory completion of a course of study in ~~radiography, radiation therapy, nuclear medicine technology, radiologist assistant, or sonography, or its equivalent to be determined by the board~~appropriate for the specified modality. The curriculum for each course of study may not be less stringent than the standards approved by the joint review committee on education in radiologic technology, joint review committee on nuclear medicine technology, commission on accreditation of allied health education programs, or any other appropriate accreditation agency approved by the board, provided the standards are not in conflict with board policy.
 - b. Pass a certification examination established or approved by the board given by a certification organization recognized by the board.
 - c. Show evidence of compliance with continuing education or recertification requirements required for registration of certification by a certification organization recognized by the board.
3. A licensee under subsection 2 may not practice a primary modality without meeting the requirements for each specific primary modality being practiced. However, a licensee under subsection 2 may practice other modalities recognized by rule upon meeting the continuing education requirements for each modality practiced by the licensee.
4. An applicant who is not licensed for a primary modality under subsection 2 may qualify for licensure to practice a modality recognized by the board, other than the primary modalities, by complying with certification or registration requirements established by the board by rule. The scope of a license issued under this subsection limits the licensee to the practice of the specific modality for which the applicant meets the requirement. However, a license issued under this subsection may be issued in conjunction with a license for additional modalities issued under subsection 7.

5. The board may establish by rule specific changes or exceptions for those modalities in which the accreditation agency or certification organization differs in certification or registration requirements from this chapter.
- 3.6. The board, upon application and payment of proper fees, may grant a license to an individual applicant who submits the necessary application and fees who has been licensed, certified, or registered to perform or administer medical imaging or radiation therapy procedures in another jurisdiction if that jurisdiction's standards of licensure are substantially equivalent to those provided in this chapter in accordance with rules adopted by the board.
7. The board may establish unique individualized licensing and practice standards and requirements for an applicant who does not meet the licensure requirements to receive a license in at least one primary modality of medical imaging or radiation therapy under subsection 2, or who meets the licensure requirements for one primary modality but not for another primary modality the applicant desires to practice.
 - a. The board may grant a license limited to one or more modalities practiced by an applicant for three or more of the five years preceding January 1, 2017. The board may establish standards and requirements for the licensee designed to maintain reasonable access to public services and to promote public safety, including continuing education. A license granted for a specified modality under this subdivision expires and may not be renewed if the licensee attains a license in that modality under subsection 2 or 4.
 - b. The board may grant a license to an applicant who began practice after December 31, 2016, for a specified modality or modalities if the applicant passes a board-approved examination and maintains specified continuing education requirements for each modality. The board may grant a conditional license allowing an applicant under this subdivision to practice before passing the examination.

¹³⁹ **SECTION 9. AMENDMENT.** Section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

43-62-15. Scope of practice.

1. A license issued by the board under this chapter must specify each medical imaging or radiation therapy modality for which the licensee is qualified to practice under section 43-62-14.
2. The board shall establish licensureadopt by rule standards concerning scope of practice for the following medical imaging and radiation therapy modalities, including:
 - a. Nuclear medicine technologist;
 - b. Radiation therapist;
 - c. Radiographer;

¹³⁹ Section 43-62-15 was also amended by section 53 of Senate Bill No. 2327, chapter 199.

- d. Radiologist assistant;
 - e. Sonographer; and
 - f. Magnetic resonance imaging technologist.
- 3.3. ~~An individual holding a license under this chapter may perform~~A licensee's performance of medical imaging or radiation therapy ~~procedures~~ on humans for diagnostic or therapeutic purposes ~~only~~must be by written, facsimile, electronic, or verbal prescription of an individual authorized by this state to prescribe medical imaging or radiation therapy ~~procedures~~ and must be under the supervision of a licensed practitioner.
- 3.4. ~~An individual holding a license under this chapter may perform~~A licensee's performance of medical imaging and radiation therapy ~~procedures~~ on humans for diagnostic or therapeutic purposes ~~only~~within is limited to the scope of the medical imaging and radiation therapy modality of that license as specified under the rules adopted by the board.

SECTION 10. AMENDMENT. Section 43-62-18 of the North Dakota Century Code is amended and reenacted as follows:

43-62-18. Disciplinary action.

The board may take disciplinary action against a licensee by any of the following means:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the performance of medical imaging or radiation therapy ~~procedures~~.
5. Letter of censure.
6. Imposition of a penalty, not to exceed one thousand dollars for any single disciplinary action-

~~Any fines collected by the board, which~~ must be deposited in the state general fund.

7. Payment of the board's expenses, including legal fees, which may be deposited in the board's operating fund.

SECTION 11. AMENDMENT. Subsections 7 and 13 of section 43-62-19 of the North Dakota Century Code are amended and reenacted as follows:

7. The violation of any provision of this chapter ~~or~~, any rule of the board, or any federal or state law applicable to the practice of medical imaging or radiation therapy, or any action, stipulation, limitation, condition, or agreement imposed by the board or its investigative panels.

13. The failure to maintain in good standing, including completion of continuing education or recertification requirements, a certification from a ~~nationally-recognized~~ certification organization recognized by the board for the medical imaging or radiation therapy modality for which a license has been issued by the board.

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

Approved March 15, 2017

Filed March 16, 2017

CHAPTER 296

SENATE BILL NO. 2240

(Senator O. Larsen)

AN ACT to create and enact a new section to chapter 43-53 of the North Dakota Century Code, relating to temporary emergency suspension of marriage and family therapists; and to amend and reenact section 43-53-03 of the North Dakota Century Code, relating to exceptions from licensure for marriage and family therapists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-53-03 of the North Dakota Century Code is amended and reenacted as follows:

43-53-03. Exemptions.

1. An individual is exempt from the requirements of this chapter if:
 - a. The individual is practicing marriage and family therapy as part of that individual's duties as an employee of a recognized academic institution or a governmental institution or agency while performing those duties for which the individual is employed by such a facility, institution, or agency.
 - b. The individual is a marriage and family therapy intern or individual preparing for the practice of marriage and family therapy under qualified supervision in a training institution or facility or supervisory arrangement recognized and approved by the board if:
 - (1) The individual is a student in a master's or doctorate program of marriage and family therapy; and
 - (2) The individual is designated by a title such as "marriage and family therapy intern", "marriage therapy intern", "family therapy intern", or other title clearly indicating such training status.
 - c. The individual is a member of the clergy of any religious denomination and providing services within the scope of ministerial duties.
 - d. The individual is a volunteer for or is employed by a nonprofit agency or community organization and the individual does not hold out to the public that the individual is a licensed marriage and family therapist.
2. This chapter does not prevent any person licensed by the state from doing work within the standards and scope of practice of that person's profession, including the practice and advertising of marriage and family therapy services.

SECTION 2. A new section to chapter 43-53 of the North Dakota Century Code is created and enacted as follows:

Temporary suspension - Appeal.

1. If, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates the continued practice by a licensed marriage and family therapist or an associate marriage and family therapist would create significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the licensed marriage and family therapist's license or the associate marriage and family therapist's license is required to reasonably protect the public from this risk of harm, the board may order a temporary suspension ex parte.
 - a. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge.
 - b. The board shall give prompt written notice of the suspension to the licensed marriage and family therapist or associate marriage and family therapist which must include a copy of the order and complaint, the date set for a full hearing, and, upon request, a specific description of the nature of the evidence, including a list of all known witnesses.
 - c. The board shall make available to the licensed marriage and family therapist or associate marriage and family therapist a specific description of any documents relied upon by the board in ordering the temporary suspension.
2. An ex parte suspension remains in effect until a final order is issued after an administrative hearing or appeal to the district court under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct an administrative hearing on the merits of the allegations to determine what disciplinary action, if any, will be taken against the licensed marriage and family therapist or associate marriage and family therapist who is the subject of the ex parte suspension. The administrative hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The licensed marriage and family therapist or associate marriage and family therapist is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The licensed marriage and family therapist or associate marriage and family therapist may appeal the ex parte temporary suspension order to the district court. On appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The district court shall give priority to the appeal for prompt disposition.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempt record.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 297

SENATE BILL NO. 2202

(Senators J. Lee, Anderson, Meyer, Nelson)
(Representatives Porter, Delmore)

AN ACT to amend and reenact section 43-48-03 and subsection 2 of section 43-48-05 of the North Dakota Century Code, relating to clinical laboratory practice exemptions and board membership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁰ **SECTION 1. AMENDMENT.** Section 43-48-03 of the North Dakota Century Code is amended and reenacted as follows:

43-48-03. Exemptions.

The provisions of this chapter do not apply to the following:

1. Physicians duly and currently licensed to practice medicine.
2. Nurses duly and currently licensed to practice nursing and practicing within the scope of the nursing license.
3. Persons performing clinical testing for teaching or research, provided that the results of any examination performed in such laboratories are not used in health maintenance, diagnosis, or treatment of disease.
4. Persons employed by the United States government, or ~~any~~ bureau, division, or agency thereof, and working in a licensed laboratory.
5. Any person in the pursuit of a supervised course of study leading to a degree at an accredited or educational program approved by the board.
6. Phlebotomy personnel performing phlebotomy procedures.
7. Persons performing testing for their own personal use and persons performing screening tests for mass screening under appropriate supervision.
8. Agents of the state or federal government performing hematological tests for anemia upon participants of the special supplemental food program for women, infants, and children.
9. An individual supervised by an individual ~~who is~~ licensed by the board and who performs tests and uses methods identified by rules adopted by the board.
10. Perfusionists performing clinical laboratory tests for hematology, coagulation, and chemistry during the course of a patient's perfusion procedures.

¹⁴⁰ Section 43-48-03 was also amended by section 50 of Senate Bill No. 2327, chapter 199.

11. Personnel of the division of laboratory services of the state department of health participating in the centers for disease control and prevention's chemical terrorism toxic metals determination program.
12. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
13. Personnel performing whole blood glucose waived tests as categorized by the food and drug administration based on the criteria established by the Clinical Laboratory Improvement Act of 1988 [42 U.S.C. 263a et seq.].

SECTION 2. AMENDMENT. Subsection 2 of section 43-48-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The board must be composed of:
 - a. ~~One physician recommended by the North Dakota pathology organization. The North Dakota pathology organization shall submit to the governor a list of physicians qualified to serve, such list to contain at least three names licensed to practice medicine in the state and qualified to practice as a pathologist.~~
 - b. The following laboratory persons, whose names may be included on a list of such persons qualified to serve submitted to the governor by the North Dakota society for medical technology or other interested persons, such list to contain at least three names for each vacancy:
 - (1) One administrative nonphysician clinical laboratory director;
 - (2) One clinical laboratory scientist; and
 - (3) One clinical laboratory technician.
 - c. Two consumer members, each of whom must be a citizen of the United States, a resident of North Dakota for at least two years before the date of appointment, and a current resident of North Dakota.
 - d. The state health officer or such officer's designee, ex officio.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 298

SENATE BILL NO. 2088

(Senators Anderson, J. Lee)
(Representatives Seibel, Westlind)

AN ACT to create and enact a new section to chapter 43-45 of the North Dakota Century Code, relating to licensed clinical addiction counselors; and to amend and reenact sections 43-45-01, 43-45-02, 43-45-03, 43-45-04, 43-45-05, 43-45-05.1, 43-45-05.2, 43-45-05.3, 43-45-05.4, 43-45-06, 43-45-07, 43-45-07.1, 43-45-07.2, and 43-45-07.3 of the North Dakota Century Code, relating to the scope of practice for addiction counselors and the licensure authority of the board of addiction counseling examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-45-01 of the North Dakota Century Code is amended and reenacted as follows:

43-45-01. Definitions.

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

1. "Addiction counseling" means the provision of counseling or assessment of ~~persons regarding their use or abuse of alcohol or a controlled substance~~an individual regarding a substance-related or addictive disorder identified by the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fifth edition, text revision (2013).
2. "Board" means the board of addiction counseling examiners.
3. "Clinical training" means training in addiction counseling, approved by the board.
4. "Internship" means work experience in a licensed addiction treatment facility under the supervision of a clinical supervisor registered by the board.
5. "Licensee" means an individual licensed by the board to practice addiction counseling.
6. "Private practice of addiction counseling" means the independent practice of addiction counseling by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or agency are not the private practice of addiction counseling.

SECTION 2. AMENDMENT. Section 43-45-02 of the North Dakota Century Code is amended and reenacted as follows:

43-45-02. Board of addiction counseling examiners - Composition.

The governor shall appoint a seven-member board of addiction counseling examiners. The ~~members shall~~membership must include:

1. Five members who are ~~licensed addiction counselors~~licensees actively engaged in the practice of addiction counseling, one of whom must be actively engaged in the private practice of addiction counseling.
2. Two members who are laypersons.

SECTION 3. AMENDMENT. Section 43-45-03 of the North Dakota Century Code is amended and reenacted as follows:

43-45-03. Board member terms.

The governor shall appoint new board members. Appointments must be for three-year terms, but ~~no person~~an individual may not be appointed to serve for more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed.

SECTION 4. AMENDMENT. Section 43-45-04 of the North Dakota Century Code is amended and reenacted as follows:

43-45-04. Board power, duties, and authority.

1. The board shall:
 - a. Administer and enforce the provisions of this chapter.
 - b. Evaluate the qualifications of applicants for a license to practice addiction counseling and issue addiction counselor, licensed clinical addiction counselor, and masters addiction counselor licenses under this chapter.
 - c. Establish ethical standards of practice for ~~persons holding a license~~licensee to practice addiction counseling in this state.
 - d. Establish continuing education requirements and approve providers of continuing education.
 - e. Approve clinical training programs.
 - f. Register clinical trainees and addiction counselor trainees.
 - g. Register interns.
 - h. Register clinical supervisors.
 - i. Register licensees for private practice.
 - j. Approve and administer examinations.
 - k. Periodically evaluate initial licensure coursework requirements and clinical training requirements to ensure the requirements are up to date and do not serve as an undue barrier to licensure.
2. The board may:
 - a. Adopt rules under chapter 28-32 to implement this chapter.

- b. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter.
- c. Recommend prosecution for violations of this chapter to the appropriate state's attorney.
- d. Recommend that the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.
- e. Collect fees for examinations, initial licensures, renewal of licenses, late renewals, private practice registrations, renewal of private practice registrations, approval of continuing education providers, and administrative fees. The fees must be established by rule in amounts necessary to compensate the board for administration and enforcement of this chapter.
- f. Employ persons to assist the board in carrying out ~~its~~ the board's duties under this chapter.

SECTION 5. AMENDMENT. Section 43-45-05 of the North Dakota Century Code is amended and reenacted as follows:

43-45-05. Board meetings.

1. The board shall meet at least quarterly. A majority of the members constitute a quorum.
2. Each board member shall serve without compensation but ~~shall~~ is entitled to receive expenses as provided in section 54-06-09.

SECTION 6. AMENDMENT. Section 43-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-45-05.1. Initial licenses.

1. The board shall issue an initial license as an addiction counselor, licensed clinical addiction counselor, or masters addiction counselor to an applicant who has met all of the following requirements:
 - a. ~~Has successfully~~ Successfully completed board-approved coursework, ~~approved by the board,~~ at an accredited college or university.
 - b. ~~Has successfully~~ Successfully completed one or more oral or written examinations approved by the board for this purpose.
 - c. ~~Has successfully~~ Successfully completed a clinical training program approved by the board or accumulated experience as established by the board by rule.
 - d. ~~Has satisfied~~ Satisfied to the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.
2. For the clinical training program or accumulated experience required of an intern seeking initial licensure, at least fifty percent of the required supervision must be provided by a supervising licensed addiction counselor, and the additional supervision may be with other professionals who are designated by

the supervising addiction counselor, approved by the board, and competent in the area of practice being supervised. The other professional must be registered as a clinical supervisor by the board that licenses the other professional.

3. The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor, licensed clinical addiction counselor, or masters addiction counselor under the laws of another jurisdiction that imposes at least substantially the same requirements that are imposed under this chapter.
- ~~3.4. An applicant who is denied~~If the board denies a licensure must be notifiedapplication, the board shall notify the applicant in writing of the reasons for denial and of the applicant's right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.

SECTION 7. AMENDMENT. Section 43-45-05.2 of the North Dakota Century Code is amended and reenacted as follows:

43-45-05.2. Representation to the public.

1. A person may not represent to the public that the person is an addiction counselor, a licensed clinical addiction counselor, or a masters addiction counselor or engage in the practice of addiction counseling in this state unless the person is a ~~licensed addiction counselor~~licensee.
2. The license issued by the board under the provisions of this chapter must be prominently displayed at the principal place of business where the ~~addiction counselor~~licensee practices.

SECTION 8. AMENDMENT. Section 43-45-05.3 of the North Dakota Century Code is amended and reenacted as follows:

43-45-05.3. Private practice of addiction counseling.

A person may not engage in the private practice of addiction counseling unless that person is an individual registered with the board as eligible for private practice under criteria established by board rule.

SECTION 9. AMENDMENT. Section 43-45-05.4 of the North Dakota Century Code is amended and reenacted as follows:

43-45-05.4. Addiction counseling internship - Loan program - Revolving fund - Continuing appropriation.

1. a. The Bank of North Dakota shall develop and implement a program under which loans may be provided to qualified individuals participating in a paid or unpaid internship at a licensed substance abuse treatment facility in this state, in order to obtain licensure ~~as an addiction counselor~~by the board.
- b. The Bank of North Dakota shall determine all terms applicable to the time and manner in which loans made under this section must be repaid.
- c. Interest on outstanding loans under this section must accrue at the Bank of North Dakota's current base rate, but may not exceed six percent per annum.

- d. The maximum loan for which an applicant may qualify under this section is seven thousand five hundred dollars.
 - e. This subsection is applicable only to individuals beginning an internship after June 30, 2015.
2. The Bank of North Dakota shall maintain a revolving loan fund for the purpose of making loans under this section. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans under this section are appropriated to the Bank on a continuing basis.

SECTION 10. AMENDMENT. Section 43-45-06 of the North Dakota Century Code is amended and reenacted as follows:

43-45-06. Addiction counseling practice - Exemptions.

1. ~~Nothing in this~~This chapter may not be construed to prevent any ~~person~~person ~~individual~~individual from doing work within the standards and ethics of that ~~person's~~individual's profession and calling, ~~provided if that the person~~provided if that the person ~~individual~~individual does not represent to the public, by title or by use of the initials L.A.C., L.C.A.C., or M.A.C., that the ~~person~~individual is engaging in addiction counseling.
2. ~~Nothing in this~~This chapter may not be construed to prevent addiction counseling trainees or interns in board-approved programs from engaging in addiction counseling related to training.

SECTION 11. AMENDMENT. Section 43-45-07 of the North Dakota Century Code is amended and reenacted as follows:

43-45-07. Renewal of license.

1. All licenses are effective when granted by the board.
2. ~~All licenses of licensed addiction counselors~~issued by the board expire on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of the continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial under section 43-45-07.1 do not exist.
4. At the time of renewal the board shall require each applicant to present satisfactory evidence ~~that the applicant has~~ completed the continuing education requirements specified by the board.
5. If the completed application for renewal is not received by December first of the odd-numbered year, a late fee will be charged.
6. If the completed application for renewal is not received on or before the expiration date, the license expires and the ~~person~~individual may not practice addiction counseling. The license may be renewed within thirty days from the date of expiration of the license if the completed application for renewal and the late fee are received within thirty days from the date of expiration of the license.

7. If a completed application for renewal of license is not received within thirty days from the date of expiration of the license, relicensure requires the licensee must former licenseholder to reapply for licensure.
8. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

SECTION 12. AMENDMENT. Section 43-45-07.1 of the North Dakota Century Code is amended and reenacted as follows:

43-45-07.1. Grounds for disciplinary proceedings.

1. The board may deny an application; and may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof at a hearing ~~that the applicant or holder of the license has engaged in~~ unprofessional conduct. Unprofessional conduct includes:
 1. a. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.
 2. b. Violating rules set by the board.
 3. c. Violating a provision of this chapter.
 4. d. Violating the professional code of conduct as adopted by the board.
 5. e. Being adjudged guilty of an offense determined by the board to have a direct bearing on an applicant's or holder of the license's ability to ~~serve~~provide addiction counseling to the public as an addiction counselor ~~of a licensee~~ or being adjudged guilty of any offense and being insufficiently rehabilitated as determined by the board under section 12.1-33-02.1.
2. One year from the date of the revocation, ~~the a former~~ licenseholder may make application for initial licensure.

SECTION 13. AMENDMENT. Section 43-45-07.2 of the North Dakota Century Code is amended and reenacted as follows:

43-45-07.2. Reporting obligations.

1. A person ~~who has~~with knowledge of any conduct constituting grounds for discipline under this chapter may report the violation to the board.
2. ~~The~~ hospital, clinic, or other health care ~~institution, facility, institution,~~ or organization shall report to the board any action taken by the hospital, clinic, or other health care facility, institution, or organization to revoke, suspend, restrict, or condition ~~an addiction counselor's a licensee's~~ privilege to practice or treat patients in the hospital, clinic, or other health care facility or institution, or as part of the organization, any denial of privileges or any other disciplinary action.

SECTION 14. AMENDMENT. Section 43-45-07.3 of the North Dakota Century Code is amended and reenacted as follows:

43-45-07.3. Complaints - Investigations.

1. A person may file a written complaint with the board citing the specific allegations of unprofessional conduct by an ~~addiction counselor~~ licensee. The board shall notify the ~~addiction counselor~~ licensee of the complaint and request a written response from the ~~addiction counselor~~ licensee.
2. The board may investigate a complaint on its own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the complainant.
3. ~~An addiction counselor~~ A licensee who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation, and providing copies of patient records when reasonably requested by the board and accompanied by the appropriate release.
4. In order to pursue the investigation, the board ~~has the power to~~ may subpoena and examine witnesses and records, including patient records, and ~~to~~ copy, photograph, or take samples. ~~The board~~ The board may require the ~~licensed addiction counselor~~ licensee to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interest of the public that this evaluation be secured. A written request from the board constitutes authorization to release information. The patient records that are released to the board are not public records.
5. Unless there is a patient release on file allowing the release of information at the public hearing, all ~~data and information, including patient records,~~ acquired by the board in ~~its~~ the board's investigation are confidential and ~~closed to the public~~. All board meetings ~~wherein~~ wherein at which patient testimony or records are taken or reviewed are confidential and closed to the public. If no patient testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

SECTION 15. A new section to chapter 43-45 of the North Dakota Century Code is created and enacted as follows:

Licensed clinical addiction counselor.

1. Under section 43-45-05.1, the board shall issue an initial license as a licensed clinical addiction counselor to a qualified applicant who:
 - a. Applies for licensure under this section before January 1, 2024;
 - b. On December 31, 2018, was licensed in this state as an addiction counselor; and
 - c. Completed ten thousand hours of full-time clinical experience as a licensed addiction counselor.

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2. The scope of practice of a licensed clinical addiction counselor is the same as the scope of practice of a masters addiction counselor.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 299

SENATE BILL NO. 2033

(Legislative Management)
(Health Services Committee)

AN ACT to amend and reenact subsection 4 of section 43-41-04, sections 43-41-07 and 43-47-06, and subsection 7 of section 43-53-01 of the North Dakota Century Code, relating to licensure requirements for behavioral health professionals; and to provide for a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~The board shall issue~~To obtain a license as a licensed independent to practice clinical social worker to work, an applicant for licensure by examination shall submit to the board a written application in the form prescribed by the board and provide satisfactory evidence the applicant who:
 - a. ~~Has a doctorate or master's degree in social work from a college or university~~an approved social work program.
 - b. ~~Has passed~~Passed an examination approved by the board for this purpose.
 - c. ~~Has satisfied the board that within~~Within a four-year period the applicant ~~has, successfully completed three thousand hours of supervised post-master's clinical social work experience. The initial one thousand five hundred of the required hours must have been under the supervision of a licensed independent clinical social worker, or, if. Additional hours of supervision may be under other qualified mental health professionals approved by the board if barriers due to the geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional. However, if an applicant began that supervised post-master's clinical social work experience before August 1, 2009, a licensed certified~~master's social worker who has two years of experience, a licensed psychologist with a doctorate degree, or a licensed psychiatrist may have supervised the required hours. The applicant may demonstrate to the board's satisfaction that experience in the practice of clinical social work meets or exceeds the minimum supervisory requirements of the board.
 - d. ~~Has satisfied the board that the applicant agrees~~Agrees to adhere to the code of social work ethics adopted by the board.
 - e. Is of good moral character. In determining the character of an applicant in a licensure decision, the board shall consider information obtained through reports made under section 43-41-04.2.

- f. Paid all applicable fees specified by the board regarding the licensure process.

¹⁴¹ **SECTION 2. AMENDMENT.** Section 43-41-07 of the North Dakota Century Code is amended and reenacted as follows:

43-41-07. Qualification for licensure by an applicant licensed in another jurisdiction.

An applicant may be granted a license upon satisfactory proof to the board that the applicant is licensed in good standing under the laws of another jurisdiction that imposes substantially the same requirements as this chapter and a board determination that at the time of application for licensure under this section the applicant possesses qualifications or experience in the practice of social work which are substantially similar to the minimum requirements under this chapter. The applicant shall pay the licensure fees specified by the board.

SECTION 3. AMENDMENT. Section 43-47-06 of the North Dakota Century Code is amended and reenacted as follows:

43-47-06. Licenses - Qualifications - Reciprocity.

1. Except as otherwise provided in this chapter, ~~no~~ person may not engage in counseling in this state unless that person is a licensed professional counselor or licensed associate professional counselor.
2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
 - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. ~~Has provided~~Provided personal and professional recommendations that meet the requirements adopted by the board and ~~has~~ satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
 - c. Has two years of supervised experience, at least fifty percent of which must have been under a licensed professional counselor, or its equivalent as determined by the board, and the additional supervised experience may have been with other qualified professionals designated by the board which are competent in the area of practice being supervised, if barriers due to geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional;
 - d. ~~Has provided~~Provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended

¹⁴¹ Section 43-41-07 was also amended by section 26 of Senate Bill No. 2042, chapter 97.

- client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
- e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.
3. The board shall issue a license as a licensed associate professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes sufficient evidence to the board that the applicant:
 - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. ~~Has provided~~Provided personal and professional recommendations that meet the requirements adopted by the board and ~~has~~ satisfied the board that the applicant will adhere to the standards of the profession of counseling; and
 - c. ~~Has provided~~Provided a written plan for supervised experience which meets the requirements adopted by the board.
 4. The board may waive the formal examination requirements for a professional counselor license ~~whenif~~ the applicant has been licensed or certified to practice counseling in another state under standards and qualifications similar to or greater than those set by the board.
 5. A professional counselor shall renew the license every two years. The board shall renew a license upon payment of a fee set by the board and upon demonstration by the licenseholder of completion of continuing education requirements set by the board.
 6. An associate professional counselor initially licensed under this chapter may be licensed for no more than two years. The associate professional counselor's license may not be extended beyond two years ~~only~~ except upon recommendation of the associate professional counselor's supervisor and three other counselors, at least one of whom must be a professor from the associate professional counselor's training program.

SECTION 4. AMENDMENT. Subsection 7 of section 43-53-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Qualified supervision" means the supervision of clinical services, in accordance with standards established by the board, by an individual who has been recognized by the board as an approved supervisor. At least fifty percent of the hours of qualified supervision must be with an approved supervisor who is a licensed marriage and family therapist and additional hours of qualified supervision may be with other professionals designated by the approved supervisor and acting under the approved supervisor. The other professional must be approved by the board, approved by that individual's licensing authority to supervise interns if appropriate, and competent in the area of practice being supervised. The marriage and family therapist approved supervisor remains the applicant's supervisor of record.

SECTION 5. BEHAVIORAL HEALTH PROFESSIONAL BOARDS - REPORT TO LEGISLATIVE MANAGEMENT. During the 2017-18 interim, the North Dakota board of social work examiners, board of addiction counseling examiners, board of counselor examiners, and North Dakota marriage and family therapy licensure board shall report to the legislative management on the status of implementation of supervision and training requirements provided in this Act.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 300

SENATE BILL NO. 2172

(Senators Oban, Anderson, Poolman)
(Representatives Rohr, Schreiber-Beck, Guggisberg)

AN ACT to create and enact a new section to chapter 43-37 of the North Dakota Century Code, relating to licensure of speech-language pathology assistants; to amend and reenact sections 43-37-02, 43-37-03, 43-37-04, 43-37-04.1, 43-37-05, 43-37-06, 43-37-08, 43-37-09, 43-37-13, and 43-37-18 of the North Dakota Century Code, relating to the state board of examiners on audiology and speech-language pathology and the regulation of speech-language pathology assistants; to repeal section 43-37-01 of the North Dakota Century Code, relating to legislative intent; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-37-02 of the North Dakota Century Code is amended and reenacted as follows:

43-37-02. Definitions.

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

1. "Audiologist" means ~~a person who practices an individual licensed by the board to practice audiology and who holds out to the public by any title or description of services incorporating the words audiologist, hearing clinician, hearing therapist, or any similar title or description of service. A person may not use the term "audiologist" in a personal reference unless all the requirements of this chapter pertaining to audiology are met.~~
2. "Audiology" means the application of principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and disorders of hearing including vestibular testing, for the purpose of evaluating, identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals.
3. "Board" means the state board of examiners on audiology and speech-language pathology.
4. "Habilitation" and "rehabilitation" include hearing aid evaluation and recommendation, auditory training, and speech reading.
5. "Person"-"Licensee" means ~~a human being an audiologist, speech-language pathologist, or speech-language pathology assistant.~~
6. "Speech-language pathologist" means ~~a person who practices an individual licensed by the board to practice speech-language pathology and meets all requirements of this chapter pertaining to speech-language pathology.~~

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, language, voice, 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.
8. "Speech-language pathology assistant" means an individual licensed by the board to assist in the practice of speech-language pathology.

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.

1. A person may not practice audiology or speech-language pathology, assist in the practice of speech-language pathology, or represent that the person is an audiologist or, speech-language pathologist, or speech-language pathology assistant in this state unless licensed annually in accordance with this chapter. However, this
2. A person may not hold out to the public by any title, abbreviation, or description of services incorporating the words audiologist, hearing clinician, hearing therapist, speech-language pathologist, speech-language pathologist assistant, or any similar title, abbreviation, or description of service unless licensed in accordance with this chapter.
3. This chapter does not prevent or restrict:
 - 1- a. A physician or ~~surgeon~~ from engaging in the practice of medicine in this state.
 - 2- b. 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- c. Any person licensed in this state by any other law from engaging in the profession or occupation for which licensed.
 - 4- d. ~~A person~~An individual who holds a valid certificate or credential as a speech-language pathologist, speech-language pathology paraprofessional, or teacher of the hearing-impaired; which is issued by the department of public instruction or the education standards and practices board, or ~~a person~~an individual employed as an audiologist or speech-language pathologist by the government of the United States, if ~~such person~~that individual 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, that individual may consult with or disseminate that ~~person's~~individual's research findings and other scientific information to individuals practicing speech-language pathologists pathology or audiologists audiology outside the jurisdiction of the organization by which that ~~person~~individual is employed.

5. ~~e.~~ The activities and services of a person ~~an individual~~ pursuing a course of study leading to a degree in speech-language pathology, communication disorders, or audiology at a college or university if ~~such~~ the activities and services constitute a part of a supervised course of study and ~~such person~~ that individual is designated an ~~an~~ audiology, communication disorder, or speech-language pathology intern, an ~~an~~ audiology, communication disorder, or speech-language pathology trainee, or by any other ~~such title~~ title 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. ~~f.~~ The performance of audiology or speech-language pathology services in this state by any person ~~an individual~~ not a resident of this state who is not licensed under this chapter if ~~such~~ the 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. ~~g.~~ Any person ~~An individual~~ 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 individuals who are hearing-impaired persons.
9. ~~h.~~ Any person ~~An individual~~ 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.
10. ~~i.~~ Any person ~~An individual~~ 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. ~~(1)~~ The training of said person ~~this individual~~;
 - b. ~~(2)~~ The administration of hearing screening procedures;
 - c. ~~(3)~~ The interpretation of testing results; and
 - d. ~~(4)~~ 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, or speech-language pathology assistant, an applicant shall meet all the following requirements:

1. Be of good moral character.

2. Possess an appropriate degree from an educational institution recognized by the board.
 - a. An applicant for a speech-language pathologist license ~~shall~~must possess at least a master's degree in speech-language pathology.
 - b. An applicant for an audiologist license ~~shall~~must possess at least a doctorate degree in audiology.
 - c. An applicant for a speech-language pathology assistant license must possess at least a bachelor's degree in speech-language pathology or communication disorders.
3. Submit evidence showing qualifications prescribed by rules of the board.
4. ~~Pass an examination approved by the board within~~Within one year of application ~~an applicant for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist must pass any applicable examination prescribed by rules adopted by the board.~~
5. Pay the prescribed fee.

SECTION 4. AMENDMENT. Section 43-37-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-37-04.1. Licensing of out-of-state practitioners.

1. The board may adopt rules establishing licensure requirements for applicants who hold a current license in good standing to practice as an audiologist ~~or, speech-language pathologist, or speech-language pathology assistant~~ in a state or jurisdiction other than this state and who are not the subject of a pending disciplinary action in any state or jurisdiction.
2. Notwithstanding section 43-37-04, as it relates to the licensure eligibility of an out-of-state audiologist ~~or, speech-language pathologist, or speech-language pathology assistant~~, the board's rules may allow for:
 - a. Waiver of the examination requirement if the applicant meets the requirements established by the board.
 - b. Consideration of education and experience in order to meet the education requirements.

SECTION 5. A new section to chapter 43-37 of the North Dakota Century Code is created and enacted as follows:

Speech-language pathology assistant - Supervising speech-language pathologist.

A speech-language pathology assistant is licensed by the board to work under the supervision of a speech-language pathologist. A speech-language pathology assistant's scope of practice is limited to tasks the supervising speech-language pathologist delegates. The supervising speech-language pathologist shall assess the speech-language pathology assistant's training and skills in determining which tasks may be delegated. The supervising speech-language pathologist shall limit the

delegated tasks to specific components of a speech and language program as set forth in treatment plans developed by the supervising speech-language pathologist.

SECTION 6. 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~~is composed of 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, four must be speech-language pathologists, one must be an otolaryngologist, 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 four terms expire on July first of each year. The governor shall fill vacancies for an unexpired term. ~~No person~~An individual may not 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. Five 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. In the case of an application for licensure as a speech-language pathology assistant, a speech-language pathologist must be a member of the quorum.

SECTION 7. 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 may ~~employ persons~~hire employees to assist the board in carrying out ~~its~~the board's duties under this chapter and may adopt rules for:

1. ~~Licensing~~Annual licensure.
2. Licensing fees not to exceed one hundred dollars per year.
3. Ethical standards of conduct.
4. Continuing competency and education.
5. License suspension or revocation.
6. Carrying out the purposes of this chapter.

SECTION 8. 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 be entitled to~~ receive compensation per day in the amount provided for members of the legislative management under section 54-35-10 and ~~shall be entitled to~~ be reimbursed for mileage and travel expenses necessarily incurred in the conduct of board business at the same rate as state employees.

SECTION 9. 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~~An individual may be licensed in both areas if that ~~person~~individual meets the respective qualifications of each area.
2. The speech-language pathology examination and the audiology examination are examinations offered by 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.~~

SECTION 10. AMENDMENT. Section 43-37-13 of the North Dakota Century Code is amended and reenacted as follows:

43-37-13. ~~Suspension and revocation of license~~Disciplinary actions.

1. The board may refuse to issue or renew a license, ~~or may suspend, or revoke a license,~~ or take other disciplinary action against a ~~licensee~~licensee if the licensee or applicant for license has engaged in unprofessional conduct. ~~Such unprofessional~~Unprofessional conduct ~~may include~~includes:
 - 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~~adopted by the board, or violating the code of ethics adopted ~~and published by the board~~ by rule.
 - c. ~~Conviction~~Being convicted of an offense if the acts for which that ~~person~~individual is convicted are determined by the board to have a direct bearing on ~~such~~that applicant's or licensee's ability to serve the public in the capacity of a speech-language pathologist, speech-language pathology assistant, 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~~Violating an order or rule adopted by the board.
 - e. ~~Violation of~~Violating this chapter.
 - f. Receiving remuneration of any kind from the sale of any type of hearing aid, unless licensed under chapter 43-33.

2. One year from the date of revocation of a license, the licensee may make application to the board for reinstatement. The board may accept or reject an application for reinstatement or may require an examination for reinstatement.

SECTION 11. AMENDMENT. Section 43-37-18 of the North Dakota Century Code is amended and reenacted as follows:

43-37-18. Penalty.

Any person ~~wh~~that violates this chapter is guilty of a class A misdemeanor.

SECTION 12. REPEAL. Section 43-37-01 of the North Dakota Century Code is repealed.

SECTION 13. EFFECTIVE DATE. This Act becomes effective January 1, 2018.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 301

SENATE BILL NO. 2141

(Senator Anderson)
(Representative Blum)

AN ACT to amend and reenact sections 43-32-01, 43-32-02, 43-32-05, 43-32-06.1, 43-32-07, 43-32-08.1, 43-32-12, 43-32-13, 43-32-14, 43-32-16, 42-32-17, 43-32-19.1, 43-32-20, 43-32-20.1, 43-32-24, 43-32-26, 43-32-27, 43-32-27.1, and 43-32-30 of the North Dakota Century Code, relating to regulation by the state board of psychologist examiners; and to repeal sections 43-32-33 and 43-32-34 of the North Dakota Century Code, relating to applied behavior analysis.

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.
- 4.3. "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.
- 5.4. "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.
- 6.5. "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.
- 7.6. "Licensee" means an industrial-organizational psychologist, an applied behavior analyst, or a psychologist.
- 8.7. "Practice of applied behavior analysis":

- a. Means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including principles of operant and respondent learning. The term includes applications of those principles, methods, and procedures to:
- (1) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals diagnosed with an autism spectrum disorder;
 - (2) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals;
 - (3) Design, supervise, evaluate, and modify treatment programs to change the behavior of groups; and
 - (4) Consult with individuals and organizations.
- b. The term does not include diagnosis, counseling, psychological testing, personality assessment, intellectual assessment, neuropsychological assessment, psychotherapy, cognitive therapy, sex therapy, family therapy, coordination of care, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

9-8. "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.

10-9. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.

11-10. "Psychology resident" means an individual who ~~has met the requirement of subdivision b of subsection 1 of section 43-32-20, is involved~~ is registered by the board and is actively engaged in supervised psychological employment, and has registered with the board practice.

12-11. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst and is supervised by a licensed psychologist or applied behavior analyst. The term does not include an applied behavior analyst.

43-12. "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, psychology, or applied behavior analysis, as appropriate.

SECTION 2. AMENDMENT. Section 43-32-02 of the North Dakota Century Code is amended and reenacted as follows:

43-32-02. State board of psychologist examiners - How appointed - Qualifications.

The governor shall appoint a state board of psychologist examiners consisting of seven members, all of whom are residents of the state. One board member must be designated a public member who is a resident of this state, is at least twenty-one years of age, and is not affiliated with any group or profession that provides or regulates health care in any form. Of the remaining six board members, at least one member must be engaged primarily in providing service in psychology or applied behavior analysis, and at least one member must be engaged primarily in teaching, training, or research in psychology or applied behavior analysis. Except the public member, each member must:

1. Be a resident of this state.
2. Be licensed under this chapter for at least five years.

SECTION 3. AMENDMENT. Section 43-32-05 of the North Dakota Century Code is amended and reenacted as follows:

43-32-05. Compensation of members - Expenses of board and members.

Each member of the board serves without compensation, but is entitled to receive reimbursement for board expenses, mileage, and travel expenses while engaged in the performance of board duties as provided in section 54-06-09. The secretary of the board is entitled to receive salary or other compensation and allowance for clerical and other expenses of the board, as the board determines.

SECTION 4. AMENDMENT. Section 43-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-06.1. Authority to appoint or employ.

The board may appoint, contract with, or employ persons to assist the board in carrying out its duties under this chapter.

SECTION 5. AMENDMENT. Section 43-32-07 of the North Dakota Century Code is amended and reenacted as follows:

43-32-07. Meetings of board - ~~Seal of board.~~

The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the president or at the written request of the governor or of any two members of the board. The meetings must be held at such places as the board may designate. ~~The board must have a seal.~~

SECTION 6. AMENDMENT. Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08.1. Continuing education requirements.

The board shall adopt rules establishing requirements for the continuing education of all licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee or registrant fails to meet applicable continuing education requirements. ~~Applicants for accreditation~~ Sponsors of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

SECTION 7. AMENDMENT. Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

43-32-12. Application and fee for licensure and registration.

The board shall adopt rules establishing the amount of the application fee for licensure and registration. A fee is not refundable, ~~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 8. AMENDMENT. Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and registration fee.

Annually, the board shall mail or transmit by electronic mail a renewal notice and application to each licensee and registrant at the address or electronic mail address on file with the board. Before November fifteenth of each year, every licensee and registrant shall apply for renewal on a renewal application form provided by the board and pay to the secretary of the board an annual fee determined by the board by rule. The Upon confirmation by the board the renewal application is complete, the criteria for renewal have been met, and the secretary of the board; ~~upon receipt of~~ has received payment of the annual fee, the secretary shall issue the licensee or registrant a certificate of annual renewal, which commences on January first. An individual may not hold out as an industrial-organizational psychologist, an applied behavior analyst, a registered applied behavior analyst, or a psychologist until the annual fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail or electronically mail a renewal notice to each licensee and registrant at the address or electronic mail address on file with the board.

SECTION 9. AMENDMENT. Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

43-32-14. Payment of delinquent annual fee - Reinstatement.

~~An individual whose~~ an individual's license or registration issued under this chapter ~~has expired~~ expires for failure to pay the annual fee ~~must be reinstated, the board shall reinstate that individual and renew the license or registration renewed if,~~ within one year from the date of expiration, the individual pays to the secretary of the board the amount of the annual fees in default and a late fee in the amount established by the board by rule and demonstrates all continuing education

requirements have been met or the board has granted an extension of the period in which to meet the continuing education requirements.

SECTION 10. AMENDMENT. Section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

43-32-16. Board to keep records.

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
 - a. The name, agedate of birth, and residence of each applicant.
 - b. The date of each applicant's application.
 - c. The place of business of each applicant.
 - d. A summary of the educational and other qualifications of each applicant.
 - e. Whether an examination was required of an applicant.
 - f. Whether a license or registration was granted to an applicant.
 - g. The date of the action of the board.
 - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection.
2. Except as otherwise provided by law, the records of the board are public records and evidence of the proceedings of the board, and a transcript of board proceedings, duly certified by the secretary of the board, ~~bearing the seal of the board~~, is admissible in evidence with the same effect as if the original were produced.

SECTION 11. AMENDMENT. Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

43-32-17. License required for practice - Titles.

1. Except as otherwise provided under this chapter, a person may not engage in the practice of psychology unless that person is licensed as a psychologist or is registered as a psychology resident under this chapter. Except as otherwise provided by this chapter, a person may not engage in the practice of industrial-organizational psychology unless that person is licensed as a psychologist or industrial-organizational psychologist or is registered as a psychology resident or industrial-organizational psychology resident under this chapter. Except as otherwise provided under this chapter, a person may not engage in the practice of applied behavior analysis unless that person is a psychologist, ~~is licensed as an applied behavior analyst~~, licensee or is registered and supervised as an applied behavior analyst as provided under this chapter.
2. A person may not use the title "psychologist" or similar title unless that person is licensed as a psychologist. A person may not use the titles "industrial psychologist", "organizational psychologist", or "industrial-organizational psychologist" unless that person is licensed as a psychologist or

industrial-organizational psychologist. A person may not use the title "licensed applied behavior analyst" or similar title unless that person is licensed as an applied behavior analyst. A person may not use the title "registered applied behavioral analyst" or similar title unless that person is registered and supervised as a registered applied behavior analyst.

3. A person may not use the title "psychology resident" or similar title unless that person is registered as a psychology resident. A person may not use the titles "industrial psychology resident", "organizational psychology resident", or "industrial-organizational psychology resident" unless that person is registered as a psychology resident or industrial-organizational psychology resident.

SECTION 12. AMENDMENT. Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-19.1. Expedited licensure - Licensing or registering applicants licensed or registered in other jurisdictions.

1. The board may grant a license or registration to an applicant who is an individual licensed, certified, or registered in good standing in another jurisdiction that imposes requirements for licensure or registration and who files a completed application on a form and in a manner the board prescribed, submits the required fee, and submits documentation:
 - a. Meets standards established by the board Confirming graduation from an accredited program in the degree of licensure or registration for which the individual is applying in this state; or
 - b. Is an applicant for licensure as a psychologist who holds a certificate of professional qualification in psychology issued by an entity approved by the board, such as the association of state and provincial psychology boards or its successor Confirming completion of a national examination required by the board related to competence in psychology or applied behavior analysis;
 - c. Identifying all professional licenses, certifications, or registrations previously obtained by the applicant in any jurisdiction;
 - d. Explaining any professional or personal conduct that reasonably may be interpreted as indicating an inability to adhere to this chapter, including the code of ethical conduct adopted by the board; and
 - e. Providing the board with a release by which the board may obtain from the applicant's current jurisdiction, confirmation of the educational degree the applicant's licensure or registration required, documentation of any disciplinary action related to the applicant's license or registration, and an explanation of all levels in the applicant's profession the current jurisdiction licenses or registers.
2. As a condition to qualify for licensure or registration under subsection 1, the board may require the applicant pass an oral examination on the ethics, laws, and rules regulating the practice of psychology, industrial-organizational psychology, or applied behavior analysis, as appropriate to the licensure or registration sought by the applicant.

3. Notwithstanding any contrary provision of this chapter, the board may issue a license or registration as authorized under chapter 43-51.
4. The board may grant a provisional license or registration to an expedited licensure applicant while the application is pending, ~~if the applicant is licensed or registered and is in good standing in another jurisdiction or is. The board may grant a provisional registration to an individual who is applying for registration as an applied behavior analyst if the individual is certified by a professional organization that is identified by the board by rule. The board may not grant, deny or place restrictions on a provisional license or registration under this subsection if in another jurisdiction, within the previous five years, the applicant had a disciplinary action against the applicant's license or registration.~~
5. Except as otherwise provided under this chapter, and in accordance with rules adopted by the board, the board ~~shall~~may issue a limited practice certificate to an applicant who is licensed or registered in another jurisdiction to practice psychology, industrial-organizational psychology, or applied behavior analysis. A limited practice certificate issued under this subsection authorizes the practice of psychology, industrial-organizational psychology, or applied behavior analysis in this state for no more than thirty days in a calendar year.

SECTION 13. AMENDMENT. Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20. Licensing - Written and oral examination - Qualifications of applicants.

The board ~~shall~~may issue a license or registration to each applicant who files ~~an~~a completed application upon a form and in a manner the board prescribes, submits the required fee, and meets the requirements of subsection 1 ~~or, 2, or 3.~~

1. An applicant for licensure as a psychologist shall demonstrate all of the following:
 - a. The applicant will adhere to the ~~American psychological association ethical principles of psychologists and code of~~ ethical conduct adopted by the board by rule.
 - b. The applicant has received, from a school or college, a doctorate degree in a program that is accredited as a doctoral program in psychology by an accrediting body approved by the board by rule.
 - c. The applicant has passed the examinations, written or oral, or both, as the board determines necessary.
 - d. The applicant has completed at least two full years of supervised professional experience, one year of which must be an internship program, and one year of which may be postdoctoral. Both years of experience must comply with the board's rules.
2. An applicant for licensure as an industrial-organizational psychologist shall demonstrate all of the following:

- a. ~~The applicant will adhere to the American psychological association ethical principles of psychologists and code of ethical conduct adopted by the board by rule.~~
 - b. The applicant has received, from a school or college, a doctorate degree in a program of studies accredited by an accrediting body approved by the board by rule, ~~which may include the American psychological association.~~
 - c. The applicant has passed the examinations, written or oral, or both, as the board determines necessary.
 - d. The applicant has completed the professional experience requirements established by the board. The requirements may not exceed the professional experience requirements for psychologists. If the professional experience requirements include a supervised experience requirement:
 - (1) The board must allow an applicant to submit to the board a personalized plan for supervised experience which may include distance-supervision by a qualified industrial-organizational psychologist.
 - (2) The board may adopt rules to establish who is qualified to perform supervision, supervision requirements, and reporting.
3. An applicant for licensure as an applied behavior analyst or registration as a registered applied behavior analyst shall:
- a. Submit written documentation confirming the applicant will adhere to the code of ethical conduct adopted by the board by rule.
 - b. Demonstrate the applicant meets board-approved education requirements adopted by the board by rule.
 - c. Demonstrate the applicant passed examinations demonstrating professional competence adopted by the board by rule.
 - d. Provide documentation indicating the applicant has established supervision requirements as determined by the board by rule. The board's rule must allow for supervision of board certified behavioral analysts by professionals with equivalent or greater training.

SECTION 14. AMENDMENT. Section 43-32-20.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20.1. Postdoctoral supervised psychological employment.

1. This section applies to postdoctoral supervised employment in the practice of psychology and industrial-organizational psychology.
2. Before starting supervised employment, a psychologist with at least three years of post-license practice experience must be identified as the primary supervisor. The primary supervisor must have a competency in supervision in professional psychology in the general area of practice being supervised.
3. Supervision must occur weekly and consist of at least one hundred hours of direct supervision, either face-to-face or through distance communications. At

least fifty of the hours of supervision must be with the primary supervisor. Additional hours of supervision may be with other professionals designated by the supervisor and competent in the area of practice being supervised. The board may adopt rules to prorate supervision for individuals preparing for licensure on a part-time basis.

4. a. An applicant seeking registration as a resident shall submit the following to the board:
 - (1) A supervision relationship form;
 - (2) An application initiation form and fee; and
 - (3) A completed online licensure application.
 - b. The board shall register an applicant as a resident if the documentation submitted by the applicant confirms the applicant meets the standards required by law.
 - c. The board shall adopt rules setting forth the requirements necessary to maintain a residency, including rules related to the supervision requirements for residents.
5. The board may adopt rules regarding postdoctoral psychology and industrial-organizational psychology supervision requirements and reporting.

SECTION 15. AMENDMENT. Section 43-32-24 of the North Dakota Century Code is amended and reenacted as follows:

43-32-24. Notice to applicant of examination results and right to re-examination.

~~The board shall state in writing its reason for refusal of a license to any applicant who has been so denied in writing the applicant of the results of the examination. An applicant who fails the examination may be re-examined at a subsequent examination upon again paying the required examination fee.~~

SECTION 16. AMENDMENT. Section 43-32-26 of the North Dakota Century Code is amended and reenacted as follows:

43-32-26. Issuance and display of license.

The board is the sole agency empowered to examine competence in the practice of psychology. A certificate of license or registration issued by the board must show the full name of the licensee, have a serial number, be signed by the president of the board, and be attested by the secretary ~~under the board's adopted seal~~. The license issued by the board under this chapter must be prominently displayed at the principal place of business at which the licensee practices.

SECTION 17. AMENDMENT. Section 43-32-27 of the North Dakota Century Code is amended and reenacted as follows:

43-32-27. Denial - Revocation or suspension of license or registration - Grounds.

1. The board, after notice, hearing, and an affirmative vote of at least a majority of board members, may withhold, deny, revoke, or suspend any license or

registration issued or applied for under this chapter and may otherwise discipline a licensee, a registrant, or an applicant upon proof the applicant, registrant, or licensee:

- a. Has been convicted of an offense determined by the board to have a direct bearing upon an individual's ability to serve the public in the practice of psychology or applied behavior analysis, or if the board finds, after the conviction of any offense, that an individual is not sufficiently rehabilitated under section 12.1-33-02.1.
 - b. Is unable to practice psychology or applied behavior analysis with reasonable skill and safety to clients or patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.
 - c. Has impersonated another individual holding a license or registration issued under this chapter or allowed another person to use the licensee's license or registration.
 - d. Has used fraud or deception in applying for a license or registration or in taking an examination under this chapter.
 - e. Has allowed the licensee's or registrant's name or license or registration issued under this chapter to be used in connection with any person who performs psychological or applied behavior analysis services outside of the area of that person's training, experience, or competence.
 - f. Is legally adjudicated insane or mentally incompetent. The record of the adjudication is conclusive evidence of that fact.
 - g. Has engaged in any form of unethical conduct as defined in ~~ethical principles and~~ the code of ethical conduct adopted by the board by rule.
 - h. Has become grossly negligent in the practice of psychology or applied behavior analysis.
 - i. Has willfully or negligently violated this chapter.
 - j. Has engaged in an act in violation of rules adopted by the board.
 - k. Has had a license or registration revoked or suspended or was disciplined in another jurisdiction.
2. The board shall state in writing the board's reason for denying a license or registration.
 3. The board may assess costs incurred by the board related to investigations and disciplinary actions. By rule, the board may set fees or fines, not to exceed five hundred dollars, for minor infractions of this chapter.
 - ~~3-4.~~ An individual whose license or registration has been revoked under this section may not reapply for licensure or registration for at least two years after the date of revocation.

- 4-5. Other than the term "in good standing", by rule, the board shall define terms related to license status, such as "revoked", "suspended", "inactive", and "probationary".

SECTION 18. AMENDMENT. Section 43-32-27.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-27.1. Complaints - Investigations.

1. A person aggrieved by the actions of a licensee, registrant, or psychology resident may file a written statement with the board citing the specific allegations of misconduct by the licensee. The board shall notify the licensee, registrant, or psychology resident of the allegation and request a written response. The board may establish procedural exceptions for processing multiple allegations from the same person.
2. The board shall determine if the information in an allegation warrants investigation as a complaint, without requiring the source of the information to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the source.
3. A licensee, registrant, or psychology resident who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or client records if reasonably requested by the board and accompanied by the appropriate release.
4. In order to pursue an investigation, the board may subpoena and examine witnesses and records, including patient and client records, and may copy, photograph, or take samples of the records. The board may require the licensee, registrant, or psychology resident to give statements under oath, to submit to a physical or psychological examination, or both, by a physician or other qualified evaluation professional selected by the board, if requiring an examination is in the best interest of the public. The patient and client records released to the board are not public records. The board may adopt rules to assign, define duties, and compensate an investigator to assist the board to process a complaint.
5. Unless a patient or client release is on file allowing the release of information at the public hearing, patient and client records acquired by the board in the board's investigation are confidential and closed to the public. All board meetings at which patient or client testimony or records are taken or reviewed are confidential and closed to the public. If patient or client testimony or records are not taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

SECTION 19. 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, industrial-organizational psychology, or applied behavior analysis at a school or college, if the activities and services are a part of the individual's supervised course of study and are under the supervision of a licensed psychologist who meets the required supervision and continuing education requirements and demonstrates competency in the area of the student's or intern's practice, industrial-organizational psychologist, or applied behavior analyst. The student or intern may not use the title "psychologist", "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst". The student or intern status and the supervisor must be clearly stated.
2. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology, applied behavior analysis, or industrial-organizational psychology unless the lecturer is licensed or registered under this chapter.
3. An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction education standards and practices board.
4. 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.
5. ~~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.~~
6. 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.
- 7-6. An individual providing applied behavior analysis services to an individual in a public school setting.
8. ~~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, applied behavior analyst, or psychologist.~~

- ~~9.7.~~ An individual who is implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the individual or caregiver does not represent as a registrant or an applied behavior analyst.
- ~~10.~~ 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 20. REPEAL. Sections 43-32-33 and 43-32-34 of the North Dakota Century Code are repealed.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 302

SENATE BILL NO. 2329

(Senators D. Larson, Dever)
(Representative Dockter)

AN ACT to amend and reenact section 43-30-04 of the North Dakota Century Code, relating to private investigative services by security officers; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-04 of the North Dakota Century Code is amended and reenacted as follows:

43-30-04. Powers of the board.

1. The board shall establish by rule the qualifications and procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services, including armed security personnel. The rules adopted under this section addressing qualifications of security officers must recognize active members of the national guard and former members of the national guard, reserve, or regular armed forces of the United States, who were not dishonorably discharged, as having met any related experience requirements. All rules adopted by the board and appeals therefrom must be in accordance with chapter 28-32.
2. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - PRIVATE INVESTIGATIVE AND SECURITY SERVICES. During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of updating North Dakota Century Code chapter 43-30, the law relating to the regulation of private investigative and security services. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 303

SENATE BILL NO. 2092

(Industry, Business and Labor Committee)
(At the request of the State Board of Massage)

AN ACT to amend and reenact sections 43-25-02 and 43-25-05, subsection 3 of section 43-25-05.1, and sections 43-25-07, 43-25-08, 43-25-09, 43-25-13, and 43-25-18 of the North Dakota Century Code, relating to the licensing and regulation of massage therapy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

43-25-02. Definitions.

1. "Board" means the North Dakota board of massage therapy.
2. a. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, using western and eastern modalities, including superficial hot and cold applications, hydrotherapy, reflexology, shiatsu, acupressure, and the use of salts or lubricants for the purpose of promoting, maintaining, and restoring the health and well-being of the client. The term includes assessment, effleurage (stroking or gliding), petrissage (kneading), tapotement (percussion), compression, vibration, friction, and active or passive range of motion and stretching either by hand, forearm, elbow, knee, foot, or with mechanical appliances for the purpose of body massage practice of massage therapy by the manual application of a system of structured touch to the soft tissues of the human body, including:
 - (1) Assessment, evaluation, or treatment;
 - (2) Pressure, friction, stroking, rocking, gliding, kneading, percussion, or vibration;
 - (3) Active or passive stretching of the body within the normal anatomical range of movement;
 - (4) Use of manual methods or mechanical or electrical devices or tools that mimic or enhance the action of human hands;
 - (5) Use of topical applications such as lubricants, scrubs, or herbal preparations; and
 - (6) Use of hot or cold applications.
- b. Except as provided in this chapter, "massage" does not include diagnosis or other services that require a license to practice medicine or surgery, osteopathic medicine, chiropractic, occupational therapy, physical therapy,

or podiatry and does not include service provided by professionals who act under their state-issued professional license, certification, or registration.

3. "Massage establishment" means any place of business in which massage is practiced.
4. "Massage therapist" means an individual ~~who practices~~licensed to practice massage.
5. "Remote education" means asynchronous education that is not in person, live, or presented in real time.

SECTION 2. AMENDMENT. Section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage therapy - Terms.

1. The governor shall appoint a board of massage, to consist of five members.
 - a. Three members of the board must be massage therapists who are licensed in this state and annually work at least five hundred hours practicing massage in this state and have done so for at least the previous three years. These members must be appointed for terms of three years, staggered so that the term of one member expires each year.
 - b. One member of the board must be a consumer member. To qualify as a consumer member an individual may not be or have been a massage therapist, may not have an immediate family member who is a massage therapist, may not be an owner of or have any affiliation with a massage school, may not be a current or past member of any other health care licensing entity, may not have a fiduciary obligation to a facility rendering health care services, may not have a financial interest in the rendering of health care services, and may not have a direct and substantial financial interest in massage therapy. This member must be appointed for a two-year term, staggered so that the term expires with a licensed board member but not with the instructor board member.
 - c. One member of the board must be ~~an~~ a current or former massage therapy instructor at a school of a massage therapy program that meets the standards set by the board. This member must be appointed for a term of two years, staggered so that the term expires with a licensed board member but not with the consumer board member.
 - d. Each member of the board holds office until that member's successor is appointed and qualified. Any member appointed to a term beginning after June 30, 2013, may only serve for a total of six consecutive years, after which that member may not be reappointed unless a period of ~~two~~three years has passed since that member last served on the board.
2. Within one month after appointment of a new member, the board shall meet at some convenient place within the state and shall annually elect a president, vice president, secretary, and ~~secretary-treasurer~~treasurer. The ~~secretary-treasurer~~treasurer must be bonded in the sum of ~~one~~at least fifty thousand dollars for the faithful discharge of the ~~secretary-treasurer's~~treasurer's duties.

3. Each member of the board must be a citizen of North Dakota and the United States.

SECTION 3. AMENDMENT. Subsection 3 of section 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The ~~secretary-treasurer~~board shall prepare and submit to the governor a biennial report detailing income and expenses and a list of licensed massage therapists.

SECTION 4. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

43-25-07. Requisites for licensure and examination - Subjects - Minimum passing grade - Fee for re-examination.

1. Any person who is eighteen years of age or more and of good moral character and temperate habits is entitled to apply to the board. An applicant may receive a license from the board as a massage therapist if the applicant:
 - a. Presents a diploma or credentials issued by ~~a school of an approved~~ massage therapy education program that meets the standards set by the board;
 - b. ~~Passes~~Receives a passing score on an examination ~~conducted or~~ approved by the board; and
 - c. Pays the required fees, which must accompany the application to the board.
2. Any applicant failing to obtain licensure within ~~six months~~one year of the initial license or relicensure application is entitled to reapply within six months after notification that the application was rejected, upon payment of a fee of fifty dollars or a lesser amount established by the board. Two applications exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. The board may approve alternate educational methods or methodology for applicants to complete educational requirements if the applicant has graduated from a school of massage that is accredited by a national or regional accrediting agency recognized by the United States department of education.

SECTION 5. AMENDMENT. Section 43-25-08 of the North Dakota Century Code is amended and reenacted as follows:

43-25-08. Fee for license.

The application fee to receive a license as a massage therapist is one hundred fifty dollars or a lesser amount established by the board.

SECTION 6. AMENDMENT. Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

43-25-09. License - Display - Renewal - Renewal fee.

1. Each license must be conspicuously displayed at the place of practice.
 2. ~~On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board.~~
 3. ~~Continuing education of at least twenty-four~~Except as otherwise provided under this subsection, twenty-four hours of continuing education hours, or equivalent college credits, submitted every two years is ~~a further requirement~~required for renewal of the license. Of the twenty-four hours, twelve hours must be classroom, hands-on hours. For the first renewal after becoming licensed in this state, a minimum of three hours of the required twenty-four hours must be ethics education. If an applicant for renewal is in good standing and has been actively practicing massage for the fifteen years immediately preceding the renewal, six hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. If an applicant for renewal is in good standing and has been actively practicing massage for the twenty-five years immediately preceding the renewal, three hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. The board may accept continuing education attained by remote means. No more than ~~nineteen~~ hours of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability as defined in this chapter.
 - a. ~~Odd-numbered licensed individuals~~Licensees with odd-numbered licenses shall report required continuing education ~~in on or before February twenty-eighth of each odd-numbered years and even-numbered licensed individuals shall report continuing education in even-numbered years, based on the calendar year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.~~
 - b. Licensees with even-numbered licenses shall report required continuing education on or before February twenty-eighth of each even-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.
 - b.c. Licensed individuals during their initial licensure period are not required to report hours of continuing education. Thereafter, the licensees shall report continuing education pursuant to ~~subdivisions~~subdivisions a and b.
 - e.d. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.
- 4.3. If the board reasonably believes a massage therapist or applicant has a physical or mental condition jeopardizing the health of those who seek ~~relief~~massage from the individual, the board may require the individual to have an appropriate examination by a qualified examiner approved by the board. If the individual has had or has any communicable disease deemed sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.

- ~~5-4.~~ A holder of an expired license may within ~~one year~~two years from the date of its expiration have the license renewed upon payment of the required renewal fee. The board may require ~~production of a new certificate of physical examination and evidence of completion of any required continued educational hours being completed.~~
- ~~6-5.~~ All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".
- ~~6.~~ An applicant with training and credentials outside of the United States must submit at the applicant's own expense qualifications, credentials, and work experience to one of the following credentialing agencies for review:
- ~~a.~~ International education research foundation;
 - ~~b.~~ International consultants of Delaware, inc.; or
 - ~~c.~~ A credentialing agency approved by the board.
- ~~7.~~ Failure to have a review completed by a credentialing agency under subsection 6 and the massage therapy application procedures indemnified by the board may result in the board denying the application. The board may accept or refuse any recommendation made by the credentialing agency.

SECTION 7. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is amended and reenacted as follows:

43-25-13. Records to be kept by the ~~secretary-treasurer of the board.~~

~~The secretary-treasurer of the board shall keep a record of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record.~~board may implement rules for record retention. Licensee information is retained by the board from the date a license is granted until five years after inactive status. Any official entry or a certificate of the absence of information, certified under the hand of the ~~secretary-treasurer~~secretary and the seal of the board, must be admitted as evidence in any of the courts of this state. The ~~secretary-treasurer~~secretary shall furnish to any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied.

SECTION 8. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity.

- ~~1.~~ Any individual who has been duly licensed and ~~is in good standing in another state, territory, or jurisdiction of the United States,~~ to practice massage in a state that meets required educational hours and requirements in this state, and who has been lawfully and continuously engaged in licensed practice for ~~two years or more immediately before filing of an application to practice in this state,~~ and who submits to the board a duly attested certificate from the ~~examining board of the state in which licensed,~~ certifying to the fact of licensure and being of good moral character and of professional attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the

board be granted a license to practice in this state without being required to take an examination:-

2. ~~An applicant for licensure by reciprocity who has been duly licensed and is in good standing to practice massage in a state with substantially similar licensure standards as determined by the board and who has been lawfully and continuously engaged in licensed practice for five years or more immediately before filing of an application to practice in this state, may be granted a license by the board without being required to take an examination if the applicant otherwise meets all of the requirements of subsection 1., if the applicant provides evidence satisfactory to the board the applicant:~~
 - a. Is licensed in good standing in any other state, territory, or jurisdiction of the United States;
 - b. Actively practiced for at least two of the last three years;
 - c. Graduated from a school of massage or massage therapy program approved by the board which may be proven by presentation of a diploma or credentials;
 - d. Passed an examination acceptable to the board;
 - e. A massage license granted to the applicant in any other state, territory, or jurisdiction is not subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes; and
2. To qualify for licensure under this section, an applicant shall submit to a statewide and nationwide criminal history record check as required by section 43-25-08.1.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 304

SENATE BILL NO. 2095

(Industry, Business and Labor Committee)
(At the request of the State Board of Cosmetology)

AN ACT to amend and reenact sections 43-11-21 and 43-11-25 of the North Dakota Century Code, relating to licensure and reciprocity of cosmetologists, manicurists, and estheticians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-21 of the North Dakota Century Code is amended and reenacted as follows:

43-11-21. Cosmetologist license - Examination required - Application - Examination - Fees.

Each person who desires to secure 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.~~
2. An examination fee as may be fixed by the board pursuant to section 43-11-28.
- 3-2. Satisfactory proof that the applicant has completed the required training in a school of cosmetology.
- 4-3. A fee for original licensure as required by section 43-11-28.

SECTION 2. 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 if all the following requirements are met:

1. The applicant has:
 - a. 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; or
 - b. Provided satisfactory proof of completing the course curriculum hours required by the board and provided proof of successfully passing the theoretical and practical examinations substantially similar to those required in this state; or

c. Provided satisfactory proof:

- (1) The applicant is licensed in good standing in other state, territory, or jurisdiction of the United States to practice cosmetology, manicuring, or esthetics;
 - (2) The applicant worked in the licensed profession for at least three of the past five years;
 - (3) The applicant graduated from a school of cosmetology, manicuring, or esthetics approved by the board which may be established by presentation of a diploma, transcript, or verification from the original licensing state, territory, or jurisdiction;
 - (4) The applicant passed a theoretical and practical examination acceptable to the board; and
 - (5) A license granted to the applicant in any other state, territory, or jurisdiction is not subject to suspension or revocation, or otherwise restricted in any manner for disciplinary purposes.
2. The applicant passes to the satisfaction of the board an examination on sanitary practices and cosmetology law in this state.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 305

SENATE BILL NO. 2310

(Senators Kannianen, Burckhard, Campbell)
(Representatives Rick C. Becker, Jones, B. Koppelman)

AN ACT to amend and reenact section 43-09-05 of the North Dakota Century Code, relating to inspections of electrical wiring installations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-05 of the North Dakota Century Code is amended and reenacted as follows:

43-09-05. Powers and duties of state electrical board - Biennial report.

The board shall adopt a seal and may adopt reasonable rules to carry out this chapter. The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The board shall appoint qualified inspectors. ~~The inspectors shall inspect, within fifteen days after~~ Upon receipt of notice of completion of any electrical wiring installation involving a value of ~~three~~ five hundred dollars or more in municipalities having ordinances requiring such inspection, ~~the inspectors shall inspect~~ the electrical installation and approve or condemn ~~the same~~ that installation. The inspector shall make a report of the inspection on forms prescribed by the board.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 306

SENATE BILL NO. 2120

(Political Subdivisions Committee)
(At the request of the Secretary of State)

AN ACT to amend and reenact subsection 4 of section 43-07-01 of the North Dakota Century Code, relating to the definition for public contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-07-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Public contract" means a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of ~~two~~four thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in ~~such~~the subcontract exceeds the sum of ~~two~~four thousand dollars.

Approved March 14, 2017

Filed March 15, 2017

OFFICES AND OFFICERS

CHAPTER 307

SENATE BILL NO. 2165

(Senators Kannianen, Clemens, Vedaa)
(Representatives Damschen, Longmuir)

AN ACT to amend and reenact section 44-02-02 of the North Dakota Century Code, relating to resignations from elected positions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-02-02 of the North Dakota Century Code is amended and reenacted as follows:

44-02-02. Resignations of officers - To whom made.

The resignation of an officer must be in writing and must be made as follows:

1. The governor and lieutenant governor, to the legislative assembly, if it is in session, and if not, to the secretary of state.
2. Any other state or district officer, to the governor.
3. A member of the legislative assembly, to the presiding officer of the branch of which the individual is a member, when in session, and when not in session, to the chairman of the legislative management. When made to the presiding officer, the presiding officer at once shall notify the chairman of the legislative management of the resignation.
4. An officer of the legislative assembly, to the branch of which the individual is an officer.
5. An elective county officer, by filing or depositing the resignation in the office of the county auditor, except that the resignation of the county auditor must be filed or deposited with the board of county commissioners. Any resignation under this subsection, unless a different time is fixed therein, takes effect upon the filing or deposit.
6. An officer of a civil township, to the board of supervisors of the township, except that a member of the board shall submit the member's resignation to the township clerk, and the township clerk forthwith shall give to the county auditor notice of the resignation of all officers whose bonds are filed with that officer.
7. A member of a school board, to the business manager of the district.
8. Any officer holding office by appointment, to the body, board, court, or officer which appointed the officer.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 308

HOUSE BILL NO. 1345

(Representatives Devlin, Delmore, K. Koppelman)
(Senators Armstrong, Casper, Nelson)

AN ACT to create and enact subsections 12 and 13 of section 44-04-18, subsection 6 of section 44-04-18.1, and section 11 of section 44-04-19.1 of the North Dakota Century Code, relating to open record and meeting laws; to amend and reenact subsection 11 of section 12.1-34-02, section 12.1-35-03, subsection 9 of section 44-04-17.1, subsections 2, 4, and 7 of section 44-04-18, subsection 2 of section 44-04-18.1, subsection 6 of section 44-04-18.7, section 44-04-18.20, subsections 5, 6, and 9 of section 44-04-19.1, subsections 3 and 5 of section 44-04-20, section 44-04-21.1, and subsection 4 of section 57-40.6-07 of the North Dakota Century Code, relating to open record and meeting laws; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴² **SECTION 1. AMENDMENT.** Subsection 11 of section 12.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

11. Protection of identifying information. Victims and witnesses may not be compelled to testify at any pretrial proceeding or at trial for purposes of identifying the victims' or witnesses' address, telephone number, place of employment, or other personal identification except for name without the victims' or witnesses' consent, unless there is a showing of good cause as determined by the court. Records of a criminal justice agency as defined by section 44-04-18.7, a correctional facility as defined in section 12-44.1-01, and the department of corrections and rehabilitation containing the address, telephone number, place of employment, or other information that could be used to locate the victim or witness to a crime, are exempt.

SECTION 2. AMENDMENT. Section 12.1-35-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-35-03. Information about child victims or witnesses of crimes generally may not appear in public record.

1. In order to protect the child from possible trauma resulting from publicity, the name of the child victim or child witness of a crime, except as specified in subsection 2, and identifying biographical information may not appear on the indictment or any other public record. Instead, a Jane Doe or Joe Doe designation must appear in all public records. Sealed confidential records containing the child's name and necessary biographical information must be kept in order to ensure that no defendant is charged twice.
2. Interviews and statements of child victims or child witnesses obtained during an investigation of a crime of a violent or sexual nature are exempt.

¹⁴² Section 12.1-34-02 was also amended by section 2 of House Bill No. 1194, chapter 113.

3. Subsection 1 does not apply to the name and identifying biographical information of:
 - a. A child victim or child witness of a criminal offense under title 39 or equivalent ordinance; and
 - b. A child victim of a fire.

SECTION 3. AMENDMENT. Subsection 9 of section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

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; and
 - (4) Training seminars where no other public business is considered or discussed.
- 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.

SECTION 4. AMENDMENT. Subsections 2, 4, and 7 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. AAn initial request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may require written clarification of the request to determine what records are being requested, but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records. 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. The public entity may withhold records pursuant to a request until such time as a requester provides payment for any outstanding balance for prior requests. 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 a public entity receives five or more requests from the same requester within seven days, the public entity may treat the requests as one request in computing the time it takes to locate and excise the 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.

4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal or mobile device. A public entity is not required to provide a copy of a record that is available to the requester on the public entity's website or on the internet. The public entity shall notify the requester the record is available online and direct the requester to the website where the record can be accessed. If the requester does not have reasonable access to the internet due to lack of computer, lack of internet availability, or inability to use a computer or the internet, the public entity shall produce paper copies for the requester, but may charge the applicable fees under this section.
7. A denial of a request for records made under this section must describe the legal authority for the denial, or a statement that a record does not exist, and must be in writing if requested.

SECTION 5. Subsections 12 and 13 to section 44-04-18 of the North Dakota Century Code are created and enacted as follows:

12. A public entity may allow an individual to utilize the individual's own personal devices for duplication of records and, if so, shall establish reasonable procedures to protect the integrity of the records as long as the procedures are not used to prevent access to the records.
13. If repeated requests for records disrupt other essential functions of the public entity, the public entity may refuse to permit inspection of the records, or provide copies of the records. A public entity refusing to provide access or copies of public records under this section shall state in writing the reasons supporting the refusal and provide the reasoning to the requester. The requester may seek an attorney general's opinion under section 44-04-21.1, on whether the public entity's decision was proper.

SECTION 6. 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 month and day of birth; 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. Information regarding the type of leave taken by an employee is exempt, although the amount of leave taken or accrued, and the dates of the leave taken, is public record. Information regarding leave applied for but not yet taken is exempt until the leave is taken.

SECTION 7. Subsection 6 to section 44-04-18.1 of the North Dakota Century Code is created and enacted as follows:

6. Records relating to a public entity's internal investigation of a complaint against a public entity or employee for misconduct are exempt until the investigation of the complaint is complete, but no longer than seventy-five calendar days from the date of the complaint.

SECTION 8. AMENDMENT. Subsection 6 of section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

6. "Personal information" means a person's medical records or medical information obtained from the medical records; motor vehicle operator's identification number; social security number; any credit, debit, or electronic fund transfer card number; month and date of birth; height; weight; home street address; home telephone number or personal cell phone number; and any financial account numbers.

SECTION 9. AMENDMENT. Section 44-04-18.20 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.20. Domestic violence and victim record information of law enforcement exempt.

The address, telephone number, or any identifying information that, if released, could reasonably be used to locate or identify a victim or alleged victim of domestic violence, of a sex offense under chapter 12.1-20, of sexual performances by a child under chapter 12.1-27.2, or of human trafficking under chapter ~~12.1-40~~12.1-41, contained in any record maintained by a ~~law enforcement~~criminal justice agency as defined by section 44-04-18.7 or correctional facility as defined by section 12-44.1-01 is exempt from ~~section 44-04-18~~ and may be redacted from the record before it is released.

SECTION 10. AMENDMENT. Subsections 5, 6, and 9 of section 44-04-19.1 of the North Dakota Century Code are amended and reenacted as follows:

5. "Attorney consultation" means any discussion between a governing body and its attorney in instances in which the governing body seeks or receives the attorney's advice regarding and in anticipation of reasonably predictable or pending civil or criminal litigation or adversarial administrative proceedings or ~~concerning pending civil or criminal litigation or pending adversarial administrative proceedings~~to receive its attorney's advice and guidance on the legal risks, strengths, and weaknesses of an action of a public entity which, if held in public, would have an adverse fiscal effect on the entity. All other discussions beyond the attorney's advice and guidance must be made in the open, unless otherwise provided by law. Mere presence or participation of an attorney at a meeting is not sufficient to constitute attorney consultation.
6. "Attorney work product" means any document or record that:
 - a. Was prepared by an attorney representing a public entity or prepared at such an attorney's express direction;
 - b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the entity; and
 - c. Was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, ~~or~~ in anticipation of reasonably predictable civil or criminal litigation or adversarial administrative proceedings, or for guidance on the legal risks, strengths, and weaknesses of an action of a public entity.
9. A governing body may hold an executive session under section 44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding a pending claim, litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity. A record revealing negotiation strategy or instruction under this section is exempt. Drafts of contracts or agreements subject to negotiations are exempt but only for so long as release would have an adverse fiscal effect on the public entity, unless the records are otherwise exempt or confidential.

SECTION 11. Subsection 11 to section 44-04-19.1 of the North Dakota Century Code is created and enacted as follows:

11. A settlement agreement between a public entity and another party is exempt from disclosure until it has been fully executed and accepted by all concerned parties unless the records are otherwise exempt or confidential. In the case of multiple settlement agreements involving multiple parties involved in the same incident or undertaking, a settlement agreement is exempt until settlement agreements have been fully executed by all concerned parties unless the records are otherwise exempt or confidential.

SECTION 12. AMENDMENT. Subsections 3 and 5 of section 44-04-20 of the North Dakota Century Code are amended and reenacted as follows:

- 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 13 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. Filing a yearly schedule of upcoming meetings does not relieve a public entity from its obligation to post an agenda for each meeting as required in subsections 2 and 4.
- The governing body's presiding officer has the responsibility of assuring that ~~such~~ public notice of a meeting's date, time, and location is given at the same time as such governing body's members are notified, and that this notice is available to anyone requesting such information. As soon as an agenda is prepared for a meeting with the information required in subsection 2 and given to members of the governing body, the agenda must be posted at the locations as required by subsection 4 and given to anyone requesting the information. When a request is made for notice of meetings, the request is effective for one year unless a different time period is specified.

SECTION 13. AMENDMENT. Section 44-04-21.1 of the North Dakota Century Code is amended and reenacted as follows:

44-04-21.1. Administrative review procedure.

- Any interested person may request an attorney general's opinion to review a written denial of a request for records under section 44-04-18, a denial of access to a meeting under section 44-04-19, or other alleged violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 by any public entity other than the legislative assembly or any committee thereof. A request made under this section must be made within thirty days of the alleged violation, except that a request based on allegations that a meeting occurred without the notice required by section 44-04-20, must be made within ninety days of the alleged violation. In preparing an opinion under this section, the attorney general has discretion to obtain and review a recording made under section 44-04-19.2. The attorney general may request and obtain information claimed to be exempt or confidential for the purpose of determining whether

the information is exempt or confidential. Any such information may not be released by the attorney general and may be returned to the provider of the information. The attorney general shall issue to the public entity involved an opinion on the alleged violation, which may be a summary opinion, unless the request is withdrawn by the person requesting the opinion or a civil action has been filed involving the possible violation. If the request pertains to a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1, the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.

2. If the attorney general issues a written opinion concluding that a violation has occurred, the public entity has seven days after the opinion is issued, regardless of whether a civil action is filed under section 44-04-21.2, to disclose the record, to issue a notice of a meeting that will be held within a reasonable time to correct the violation, or to take steps to correct any other violation. If the public entity fails to take the required action within the seven-day period and the person requesting the opinion prevails in a civil action brought under section 44-04-21.2, the person must be awarded costs, disbursements, and reasonable attorney's fees in the action and on appeal. The attorney general may require officials of the public entity at issue in the opinion to obtain mandatory training by a certain date. The consequences for failing to comply with an attorney general's opinion issued under this section will be the same as for other attorney general's opinions, including potential personal liability for the person or persons responsible for the noncompliance.
3. If a state-level public entity as defined in subdivision a of subsection 13 of section 44-04-17.1 does not comply in full with the attorney general's opinion, and a civil action is brought under section 44-04-21.2 or is reasonably predictable, the entity, at its sole cost and expense, shall retain separate counsel who has been approved and appointed by the attorney general as a special assistant attorney general to represent the entity in that action.

SECTION 14. AMENDMENT. Subsection 4 of section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

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. The emergency services communication system coordinator may refer requests to the appropriate investigating agency possessing the recording and shall communicate this referral to the requester. The investigating agency shall answer requests for the records. If an investigating agency does not have possession of the record, the emergency services communication system coordinator shall respond to the request for the record.

SECTION 15. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 309

HOUSE BILL NO. 1108

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact subsection 7 of section 44-04-18.4 of the North Dakota Century Code, relating to the availability of records involving security and cyber attacks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴³ **SECTION 1. AMENDMENT.** Subsection 7 of section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

7. Unless made confidential under subsection 1, records received by the state department of emergency services under chapter 37-17.1 and the state local intelligence center from the federal government and any public or private agency or entity for disaster mitigation, preparation, response, and recovery, or for cyber threat are exempt.

Approved March 9, 2017

Filed March 9, 2017

¹⁴³ Section 44-04-18.4 was also amended by section 2 of House Bill No. 1090, chapter 239, section 1 of Senate Bill No. 2295, chapter 312, and section 54 of Senate Bill No. 2327, chapter 199.

CHAPTER 310

SENATE BILL NO. 2195

(Senators Wardner, Dever, Dotzenrod)
(Representatives Steiner, Streyle, Mock)

AN ACT to amend and reenact section 44-04-18.15 of the North Dakota Century Code, relating to exempting donor records from public disclosure under open records laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.15 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.15. Fundraising and donor records of board of higher education, university system, and affiliated nonprofit organizations exempt.

1. Any private donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by a board of higher education or university system officer or employee or by an affiliated nonprofit organization that provides support to and is organized and operated for the benefit of an institution under the authority of the board of higher education is exempt.
2. Any private donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by a nonprofit organization that is a public entity is exempt.
3. For the purposes of this section, "financial information" includes data that provides details regarding a gift, a payment schedule of a gift, the form of a gift, or the specific amount of a gift made by a donor.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 311

SENATE BILL NO. 2152

(Senators Laffen, Hogue, Poolman)
(Representatives Kasper, Nathe, Delmore)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to public employment hiring practices and confidentiality of some applications.

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:

Applications for public employment - Hiring process - Confidential records and open records.

If a public entity or any person delegated authority by a public entity to review applications or make hiring decisions receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three or more of the qualified applicants as finalists for further consideration before the public entity or other person may issue an offer of employment to fill the position. However, if the public entity or other person does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist. The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are confidential, except records related to finalists are open to the public after the finalists are designated. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss confidential applications. If, by the close of the application period for a vacant position, a public entity receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public.

Approved March 30, 2017

Filed March 30, 2017

CHAPTER 312

SENATE BILL NO. 2295

(Senators Schaible, Holmberg, Krebsbach)
(Representatives Dockter, Sanford, Streyle)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to the exemption of state university and college title IX records from public disclosure; and to amend and reenact section 44-04-18.4 of the North Dakota Century Code, relating to the confidentiality of research information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁴ **SECTION 1. AMENDMENT.** Section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial, and research information.

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. Under this section, unless the context otherwise requires:
 - a. "Commercial information" means information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
 - b. "Financial information" means information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
 - c. "Proprietary information" includes:
 - (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
 - (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.

¹⁴⁴ Section 44-04-18.4 was also amended by section 2 of House Bill No. 1090, chapter 239, section 1 of House Bill No. 1108, chapter 309, and section 54 of Senate Bill No. 2327, chapter 199.

- (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
 - (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
 - (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.
 - (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
 - (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
 - (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.
- d. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:
- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
 - (2) Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.
3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.

4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.
5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
 - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
 - b. Trade secrets and proprietary, commercial, or financial information received from a person that is interested in applying for or receiving financing, technical assistance, or other forms of business assistance.
6. Unless made confidential under subsection 1 or made exempt under subsection 5, bids or proposals received by a public entity in response to a request for proposals by the public entity are exempt until all of the proposals have been received and opened by the public entity or until all oral presentations regarding the proposals, if any, have been heard by the public entity. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.
7. Unless made confidential under subsection 1, records received by the state department of emergency services under chapter 37-17.1 from the federal government and any public or private agency or entity for disaster mitigation, preparation, response, and recovery are exempt.
8. Unless made confidential under subsection 1, university research records are exempt. "University research records" means data and records, other than a financial or administrative record, produced or collected by or for faculty or staff of an institution under the control of the state board of higher education in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone, or in conjunction with a governmental or private entity, provided the information has not been publicly released, published, or patented.
9. Personally identifiable study information is confidential. "Personally identifiable study information" means information about an individual participating in a human research study or project at an institution under the control of the state board of higher education which requires prospective institutional review board review or a determination of exemption, if the information can be used to distinguish or trace the individual's identity, or is linked or linkable to the individual. Examples of personally identifiable study information include name, maiden name, mother's maiden name, alias, personal identification number, social security number, passport number, driver's license number, taxpayer identification number, financial account or credit card number, address, email address, photographic images, fingerprints, handwriting, and other biometric data. Information about participants in human subjects research which does

not constitute personally identifiable study information but is part of a human subjects research study or project at an institution under the control of the state board of higher education requiring prospective institutional review board review or a determination of exemption is a university research record under subsection 8.

10. Subsections 8 and 9 do not apply to a student record or other information disclosed by an institution under the control of the state board of higher education to the statewide longitudinal data system.

SECTION 2. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Title IX records at state universities and colleges exempt.

Any record related to a complaint or investigation under title IX of the Education Amendments of 1972 [Pub. L. 92-318; 20 U.S.C. 1681 et seq.] at an institution under the control of the state board of higher education which contains personally identifiable information about a party to the complaint is an exempt record. For purposes of this section, "personally identifiable information" means information that directly identifies an individual, and information that, alone or in combination with other information, is linked or linkable to an individual and would allow a reasonable person who lacks knowledge of the relevant circumstances to identify the individual.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 313

HOUSE BILL NO. 1316

(Representatives Klemin, K. Koppelman, Maragos)
(Senators Grabinger, Hogue)

AN ACT to amend and reenact subsection 5 of section 44-06.1-01, section 44-06.1-17, subsections 5 and 9 of section 44-06.1-20, subsection 2 of section 44-06.1-21, subsections 6, 7, and 8 of section 44-06.1-23, and section 44-06.1-27 of the North Dakota Century Code, relating to notarial acts, notary commissions, and notary public name and address changes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 44-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~ 7 of section 44-06.1-23, and noting a protest of a negotiable instrument.

SECTION 2. AMENDMENT. Section 44-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

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.~~

SECTION 3. AMENDMENT. Subsections 5 and 9 of section 44-06.1-20 of the North Dakota Century Code are amended and reenacted as follows:

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~~four 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.

9. Each notary public issued a commission shall notify the secretary of state by mail in writing within sixty days of any change of address. ~~If a notary fails to notify the secretary of state within sixty days of a change of address, the secretary of state may impose a late fee in the amount of ten dollars. The notary shall pay any late fee imposed by the secretary of state before the renewal of the notary's commission.~~

SECTION 4. AMENDMENT. Subsection 2 of section 44-06.1-21 of the North Dakota Century Code is amended and reenacted as follows:

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~~four years following the date of revocation.

SECTION 5. AMENDMENT. Subsections 6, 7, and 8 of section 44-06.1-23 of the North Dakota Century Code are amended and reenacted as follows:

6. A notary public may not notarize a signature on a document if:
 - a. The document was not first signed or re-signed in the presence of the notary public, in the case of a verification on oath or affirmation, or in the case of an acknowledgment, was not acknowledged in the presence of the notary public.
 - b. The name of the notary public or the spouse of the notary public appears on the document as a party or in which document either individual has a direct beneficial interest or if either individual appears as a signatory to a petition within the meaning of section 1-01-50. A notarial act performed in violation of this subdivision is voidable.
 - c. The signature is that of the notary public or the spouse of the notary public.
 - d. Except as otherwise provided by law, the notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.
 - 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.if:~~
- a. The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;
 - b. The document is a copy or certified copy of an instrument entitled by law to be recorded; or
 - c. The document is a copy or certified copy of a public record containing an official seal.
8. A notary public ~~must~~shall affix the notary's seal to each verification on oath or affirmation or acknowledgment official stamp at the time of performing the ~~each~~ notarial act.

SECTION 6. AMENDMENT. Section 44-06.1-27 of the North Dakota Century Code is amended and reenacted as follows:

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~~commission with the notary's new name is received, 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

Upon receipt of the rider and fee, the secretary of state shall issue a certificate of authorization that the notary public must use to obtain a new stamping device. The notary 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 authorization is on file, the secretary of state shall issue a commission with the notary's new name.

Approved March 22, 2017

Filed March 23, 2017

PRINTING LAWS

CHAPTER 314

HOUSE BILL NO. 1280

(Representatives Ertelt, Dobervich, Hanson, Howe, Pyle, M. Ruby, Simons)
(Senators Kannianen, Vedaa)

AN ACT to amend and reenact section 46-04-05 of the North Dakota Century Code, relating to distribution of session laws and codes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-04-05 of the North Dakota Century Code is amended and reenacted as follows:

46-04-05. Distribution of session laws, compilations, and codifications to county officers.

The board of county commissioners of each county, immediately after the publication of any session laws, codes, or compilations, shall cause a copy thereof to be furnished to the following county officers upon request:

1. Auditor.
2. State's attorney.
3. Ex officio clerk of court.
4. Sheriff.

If any of the offices legally have been combined in the county, only one copy of the session laws, codes, or compilations ~~need requested must~~ be furnished for the combined offices ~~so combined~~. ~~Provided, however, that such~~Any codifications and copies of the session laws remain the permanent property of the county.

Approved March 22, 2017

Filed March 23, 2017

PROPERTY

CHAPTER 315

SENATE BILL NO. 2253

(Senators Unruh, Kannianen, Rust)
(Representatives Delzer, Kempenich, Steiner)

AN ACT to create and enact a new section to chapter 47-09 of the North Dakota Century Code, relating to transfers of land between any federal, state, or local governmental entities; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-09 of the North Dakota Century Code is created and enacted as follows:

Land transfers - Filing requirements.

A transfer of land between any federal, state, or local governmental entities must have a deed with a proper legal description filed with the county recorder.

SECTION 2. RETROACTIVE APPLICATION. This Act is retroactive in application.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 316

HOUSE BILL NO. 1220

(Representatives Kading, Hogan, Lefor, McWilliams, Schneider)

AN ACT to amend and reenact subsection 1 of section 47-16-07.1 of the North Dakota Century Code, relating to lessor security deposit limitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 47-16-07.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in a federally insured interest-bearing savings or checking account for the benefit of the tenant. The security deposit and any interest accruing on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent, except a lessor may accept an amount or value up to two month's rent, as security, from an individual convicted of a felony offense as an incentive to rent the property to the individual.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 317

HOUSE BILL NO. 1272

(Representatives K. Koppelman, Kading, Kasper, Lefor, Louser, Olson)
(Senators Anderson, Clemens)

AN ACT to create and enact section 47-16-07.6 of the North Dakota Century Code, relating to reasonable accommodations for service animals in rental dwelling units; to amend and reenact section 47-16-07.5 of the North Dakota Century Code, relating to disability documentation for service or assistance animals in a rental dwelling; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-07.5 of the North Dakota Century Code is amended and reenacted as follows:

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician or medical professional who does not operate in this state solely to provide certification for service or assistance animals. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. A landlord may not require supporting documentation from a tenant if the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord.

SECTION 2. Section 47-16-07.6 of the North Dakota Century Code is created and enacted as follows:

47-16-07.6. Service animals - Housing - Penalties for furnishing fraudulent disability documentation.

1. An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47-16-07.5, knowingly makes a false claim of having a disability that requires the use of a service animal or assistance animal or knowingly provides fraudulent supporting documentation in connection with such a claim.
2. If the individual pleads guilty or is convicted of an offense under subsection 1, a lessor may evict a lessee and the lessor is entitled to a damage fee, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal or assistance animal.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 318

HOUSE BILL NO. 1214

(Representative Klemin)

(Senator Hogue)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact a new chapter 47-36 of the North Dakota Century Code, relating to a Uniform Fiduciary Access to Digital Assets Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 47-36 of the North Dakota Century Code is created and enacted as follows:

47-36-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of a user or provides goods or services to the user.
2. "Agent" means an attorney in fact granted authority under a durable or nondurable power of attorney.
3. "Carries" means engages in the transmission of an electronic communication.
4. "Catalog of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
5. "Conservator or guardian" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator or guardian.
6. "Content of an electronic communication" means information concerning the substance or meaning of the communication which:
 - a. Has been sent or received by a user;
 - b. Is in electronic storage by a custodian providing an electronic communication service to the public, or is carried or maintained by a custodian providing a remote computing service to the public; and
 - c. Is not readily accessible to the public.
7. "Court" means a district court with jurisdiction over matter that relates to this chapter.
8. "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

9. "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.
10. "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
11. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
12. "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system that affects interstate or foreign commerce, but does not include:
 - a. Any wire or oral communication;
 - b. Any communication made through a tone-only paging device;
 - c. Any communication from an electronic or mechanical device which permits the tracking of the movement of a person or object; and
 - d. Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.
13. "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.
14. "Fiduciary" means an original, an additional, or a successor personal representative, conservator or guardian, agent, or trustee.
15. "Information" includes data, text, images, videos, sounds, codes, computer programs, software, and databases.
16. "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.
17. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.
18. "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under the laws of this state other than this chapter.
19. "Power of attorney" means a record that grants an agent authority to act in the place of a principal.
20. "Principal" means an individual who grants authority to an agent in a power of attorney.

21. "Protected person" means an individual for whom a conservator or guardian has been appointed. The term includes an individual for whom an application for the appointment of a conservator or guardian is pending.
22. "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.
23. "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of any wire, radio, electromagnetic, photo-optical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.
24. "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.
25. "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.
26. "User" means a person that has an account with a custodian.
27. "Will" includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

47-36-02. Applicability.

1. This chapter applies to:
 - a. A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this chapter;
 - b. A personal representative acting for a decedent who died before, on, or after the effective date of this chapter;
 - c. A conservatorship or guardianship proceeding commenced before, on, or after the effective date of this chapter;
 - d. A trustee acting under a trust created before, on, or after the effective date of this chapter; and
 - e. A custodian if the user resides in this state or resided in this state at the time of the user's death.
2. This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

47-36-03. User direction for disclosure of digital assets.

1. A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding

disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

2. If a user has not used an online tool to give direction under subsection 1 or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.
3. A user's direction under subsection 1 or 2 overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

47-36-04. Terms-of-service agreement.

1. This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.
2. This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts.
3. A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under section 47-36-03.

47-36-05. Procedure for disclosing digital assets.

1. When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion:
 - a. Grant a fiduciary or designated recipient full access to the user's account;
 - b. Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
 - c. Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.
2. A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.
3. A custodian need not disclose under this chapter a digital asset deleted by a user.
4. If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:
 - a. A subset limited by date of the user's digital assets;

- b. All of the user's digital assets to the fiduciary or designated recipient;
- c. None of the user's digital assets; or
- d. All of the user's digital assets to the court for review in camera.

47-36-06. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

1. A written request for disclosure in physical or electronic form;
2. A certified copy of the death certificate of the user;
3. A certified copy of the letter of appointment of the representative or a small estate affidavit or court order;
4. Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and
5. If requested by the custodian:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - b. Evidence linking the account to the user; or
 - c. A finding by the court that:
 - (1) The user had a specific account with the custodian, identifiable by the information specified in subdivision a;
 - (2) Disclosure of the content of electronic communications of the user would not violate applicable state or federal law;
 - (3) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or
 - (4) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

47-36-07. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user if the representative gives the custodian:

1. A written request for disclosure in physical or electronic form;

2. A certified copy of the death certificate of the user;
3. A certified copy of the letter of appointment of the representative or a small estate affidavit or court order; and
4. If requested by the custodian:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - b. Evidence linking the account to the user;
 - c. An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or
 - d. A finding by the court that:
 - (1) The user had a specific account with the custodian, identifiable by the information specified in subdivision a. or
 - (2) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

47-36-08. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

1. A written request for disclosure in physical or electronic form;
2. An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;
3. A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
4. If requested by the custodian:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - b. Evidence linking the account to the principal.

47-36-09. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalog of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

1. A written request for disclosure in physical or electronic form;

2. An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;
3. A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
4. If requested by the custodian:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - b. Evidence linking the account to the principal.

47-36-10. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalog of electronic communications of the trustee and the content of electronic communications.

47-36-11. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

1. A written request for disclosure in physical or electronic form;
2. A certified copy of the trust instrument or a certification of the trust under section 59-18-13 which includes consent to disclosure of the content of electronic communications to the trustee;
3. A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
4. If requested by the custodian:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - b. Evidence linking the account to the trust.

47-36-12. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account a catalog of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

1. A written request for disclosure in physical or electronic form;
2. A certified copy of the trust instrument or a certification of the trust under section 59-18-13;
3. A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
4. If requested by the custodian:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - b. Evidence linking the account to the trust.

47-36-13. Disclosure of digital assets to conservator or guardian of protected person.

1. After an opportunity for a hearing under section 30.1-29-07, the court may grant a conservator or guardian access to the digital assets of a protected person.
2. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator or guardian the catalog of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator or guardian gives the custodian:
 - a. A written request for disclosure in physical or electronic form;
 - b. A certified copy of the court order that gives the conservator or guardian authority over the digital assets of the protected person; and
 - c. If requested by the custodian:
 - (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or
 - (2) Evidence linking the account to the protected person.
3. A conservator or guardian with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator or guardian authority over the protected person's property.

47-36-14. Fiduciary duty and authority.

1. The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:
 - a. The duty of care;

- b. The duty of loyalty; and
- c. The duty of confidentiality.
2. A fiduciary's or designated recipient's authority with respect to a digital asset of a user:
 - a. Is subject to the applicable terms of service except as otherwise provided in subsection 4;
 - b. Is subject to other applicable law, including copyright law;
 - c. In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
 - d. May not be used to impersonate the user.
3. A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and which is not held by a custodian or subject to a terms-of-service agreement.
4. A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including applicable law on unauthorized computer access.
5. A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:
 - a. Has the right to access the property and any digital asset stored in it; and
 - b. Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including applicable law on unauthorized computer access.
6. A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.
7. A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:
 - a. A certified copy of the death certificate of the user if the user is deceased;
 - b. A certified copy of the letter of appointment of the representative or a small estate affidavit or court order, court order, power of attorney, or trust giving the fiduciary authority over the account; and
 - c. If requested by the custodian:
 - (1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (2) Evidence linking the account to the user; or

- (3) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in paragraph 1.

47-36-15. Custodian compliance and immunity.

1. Not later than sixty days after receipt of the information required under sections 47-36-06 through 47-36-14, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.
2. An order under subsection 1 directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. 2702.
3. A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.
4. A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.
5. This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that:
 - a. Specifies an account belongs to the protected person or principal;
 - b. Specifies there is sufficient consent from the protected person or principal to support the requested disclosure; and
 - c. Contains a finding required by law other than this chapter.
6. A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

47-36-16. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

47-36-17. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 468; 15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

Approved March 30, 2017

Filed March 30, 2017

PUBLIC BUILDINGS

CHAPTER 319

SENATE BILL NO. 2168

(Senators Burckhard, Campbell, Laffen)
(Representatives Rich S. Becker, B. Koppelman, Streyle)

AN ACT to amend and reenact section 48-01.2-01 of the North Dakota Century Code, relating to public improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agency construction management" means a public improvement delivery method through which a person provides to a governing body experienced construction management services, including ideas on constructability, documentation of design and construction, and coordination of project schedules.
2. "Architect" means an individual registered as an architect under chapter 43-03.
3. "Common ownership" means a shared management or ownership interest in two or more entities.
4. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than the threshold established under section 48-01.2-02.1.
5. "Construction administration" means administrative services provided by a governing body or an architect, a landscape architect, or an engineer, and includes providing clarifications, submittal review, recommendations for payment, preparation of change orders, and other administrative services included in the agreement with the architect, landscape architect, or engineer. The term does not include supervision of the construction activities for the construction contracts.
6. "Construction management at-risk" means a public improvement delivery method through which a construction manager provides advice to the governing body during the planning and design phase of a public

improvement, negotiates a contract with the governing body for the general construction bid package of the public improvement, and contracts with subcontractors and suppliers for the actual construction of the public improvement.

7. "Construction manager" means a contractor licensed under chapter 43-07 or an individual employed by a licensed contractor which has the expertise and resources to assist a governing body with the management of the design, contracting, and construction aspects of a public improvement.
8. "Construction observation" means observation of construction work and site visits by an architect, a landscape architect, or an engineer to assist the governing body in determining that the work conforms in general to the requirements of the construction contract and that the contractor has implemented and maintained the integrity of the design concept of a project as a functioning whole as indicated in the construction contract.
9. "Contract" means a type of agency agreement for the procurement of services under this chapter.
10. "Contractor" means any person, duly licensed, that undertakes or enters a contract with a governing body for the construction or construction management of any public improvement, including multiple prime contracts.
11. "Design services" means architect services, engineer services, landscape architect services, or surveyor services.
12. "Design-bid-build" means a project delivery method in which design and construction of the project are in sequential phases, and in which the first project phase involves design services, the second project phase involves securing a contractor through a bidding process, and the third project phase provides for construction of the project by a contractor awarded the project.
13. "Emergency situation" means a sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the governing body, architect, engineer, landscape architect, or contractor.
14. "Engineer" means an individual registered as an engineer under chapter 43-19.1.
15. "General conditions" means the written portion of a contract setting forth the governing body's minimum acceptable performance requirements, including the rights, responsibilities, and relationships of the parties involved in the performance of the contract.
16. "Governing body" means the governing officer or board of a state entity or a political subdivision.
17. "Guaranteed maximum price" means the maximum amount a construction manager at-risk may be paid under a contract to construct a public improvement.

18. "Landscape architect services" means landscape architecture services governed under chapter 43-03.
 19. "Lowest responsible bidder" means the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes that may be identified in the advertisement for bids.
 20. "Political subdivision" means a county, township, park district, school district, city, and any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.
 21. "Public improvement" means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds and, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building and includes an improvement on public or nonpublic land if any portion of the construction phase of the project is paid for with public funds or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38.
- 21-22. "Subcontractor" means a person that contracts to perform work or render a service to a contractor or to another subcontractor as part of a contract with a governing body.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 320

SENATE BILL NO. 2146

(Senators Kannianen, Campbell, Laffen)
(Representatives Beadle, Sukut)

AN ACT to amend and reenact sections 48-01.2-02.1 and 48-01.2-10 of the North Dakota Century Code, relating to public improvement bid and bond thresholds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-02.1. Public improvement construction threshold.

The threshold for bidding construction of a public improvement is one hundred fifty thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is one hundred fifty thousand dollars.

SECTION 2. AMENDMENT. Section 48-01.2-10 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-10. Bonds from contractors for public improvements.

1. Unless otherwise provided under this chapter, a governing body authorized to enter a contract for the construction of a public improvement in excess of one hundred fifty thousand dollars shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor performed and any supplies, and materials furnished and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or any subcontractor may sue on the bond.
2. A governing body may not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 321

SENATE BILL NO. 2142

(Senators Laffen, Klein, Oban)
(Representative Kasper)

AN ACT to amend and reenact section 48-01.2-22 of the North Dakota Century Code, relating to construction manager at-risk subcontractor bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.2-22 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-22. Subcontractor bids.

1. An agency construction manager selected for a public improvement shall publicly advertise and publicly open bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall publicly advertise ~~publicly~~ and ~~receive~~publicly open bids from subcontractors for the work items the construction manager at-risk chooses not to perform. The construction manager at-risk then shall evaluate the bids and determine which is the most responsible. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 322

SENATE BILL NO. 2147

(Senators Kannianen, Campbell, Laffen)
(Representatives Beadle, Sukut)

AN ACT to amend and reenact section 48-01.2-23 of the North Dakota Century Code, relating to bond requirements for public improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.2-23 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-23. Bond required.

1. An agency construction manager, before starting any work, shall provide the governing body with a bond that is equal to the cost of the agency construction manager's services with the governing body. ~~Each~~Under an agency construction manager delivery method, each contractor performing services on the public improvement shall provide the governing body with a separate bond for the contractor's portion of the public improvement.
2. A construction manager at-risk, before starting any construction, shall provide the governing body with a bond in an amount at least equal to the amount of the guaranteed maximum price. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the construction services contract and pay all bills or claims on account of labor and materials, including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01.1-02 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor may sue on the bond. Under a construction manager at-risk delivery method, the governing body may not require each contractor performing services on the public improvement to provide a separate bond for the contractor's portion of the public improvement.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 323

SENATE BILL NO. 2271

(Senator Laffen)

AN ACT to amend and reenact sections 48-05-10, 48-05-11, and 48-05-12 of the North Dakota Century Code, relating to energy conservation measures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-05-10 of the North Dakota Century Code is amended and reenacted as follows:

48-05-10. Energy conservation measure recommendations.

Before entering into a contract under section 48-05-11, a governmental unit shall submit a request for proposals. The time period between the request for proposals and the due date for proposals may be no less than fifteen business days. Upon receipt of the request for proposals, the governmental unit shall evaluate all ~~reports~~ proposals from qualified providers which ~~summarize~~ include estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, and estimates of the amounts by which energy or operating costs will be reduced. ~~If technical assistance is not available by a licensed architect or registered professional engineer on the governmental unit staff, then the evaluation of this report must be done by a registered professional engineer or architect, who is to be retained by the governmental unit. The governmental unit may pay a reasonable fee for preparation of the report or include the fee as part of a contract under section 48-05-11.~~

SECTION 2. AMENDMENT. Section 48-05-11 of the North Dakota Century Code is amended and reenacted as follows:

48-05-11. Guaranteed energy savings contracts.

The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the names of the parties to the proposed contract, and the purpose of the contract. After reviewing the report under section 48-05-10, a governmental unit may enter a guaranteed energy savings contract with a qualified provider if the governmental unit finds that the amount the governmental unit would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over a period not exceeding fifteen years from the date of installation if the recommendations in the report are followed. The contract must include a written guarantee of the qualified provider that the energy and operating cost-savings will meet or exceed the costs of the project, including costs of the system, a list of subcontractor pricing, the financing costs for the project, and any provider fees. The written guarantee must be for a period equal to the financing period, which may provide payments over a period not exceeding fifteen years. If the governmental unit can document that savings meet or exceed the payment for a period of not less than three years, the governmental unit may request a waiver of the guaranteed portion of the contract for the remainder of the financing term. A guarantee waiver request must be approved by a committee administered by the division of community services. If

the contract involves facility alteration or real property improvement, a qualified provider to whom the contract is awarded shall give a sufficient bond to the governmental unit for the faithful performance of the contract.

SECTION 3. AMENDMENT. Section 48-05-12 of the North Dakota Century Code is amended and reenacted as follows:

48-05-12. Competitive bidding and architect and engineering services.

Guaranteed energy savings contracts are not subject to the requirements of chapter 48-01.2, which relate to competitive bidding, ~~and are not subject to section 43-19.1-28.~~

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 324

SENATE BILL NO. 2334

(Senator Wardner)

AN ACT to create and enact a new section to chapter 48-08 of the North Dakota Century Code, relating to the designation of memorial hall.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 48-08 of the North Dakota Century Code is created and enacted as follows:

Designation of memorial hall.

The area on the first floor of the state capitol from the legislative assembly hall on the west, past the double stairway, to the brass columns on the east, is designated as memorial hall.

Approved March 29, 2017

Filed March 30, 2017

PUBLIC UTILITIES

CHAPTER 325

HOUSE BILL NO. 1398

(Representatives J. Nelson, Holman, Seibel, Skroch, Weisz)
(Senators Dotzenrod, Kannianen, Klein)

AN ACT to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to the jurisdiction of the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities - Exemption.

1. Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eighteen thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eighteen thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission granted under chapters 49-03 and 49-03.1 or sections 49-04-05 and 49-04-06.
2. Upon receipt of a resolution from the governing body of a city not served on August 1, 2017, with natural gas distribution service from a public utility requesting an exemption, and stating its reasons for doing so, the commission shall grant the public utility an exemption from sections 49-02-03, 49-02-11, and 49-02-15, and chapters 49-03.1 and 49-04 if the public utility:
 - a. Has a franchise to supply customers within the city and the area of the extraterritorial zoning jurisdiction of the city with natural gas distribution service;
 - b. Consents to the exemption; and

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- c. Serves no more than two thousand five hundred customers within the city and the area of the extraterritorial zoning jurisdiction of the city.
3. Upon approval of the exemption, the rates, contracts, or services rendered by the public utility within the exempted area are subject to regulation by the city.
4. Notwithstanding an exemption granted under this section, the public utility remains subject to any rules of the commission governing customer service disconnections, and resale of natural gas service furnished or causing the resale of natural gas service by any customer is prohibited.
5. If a city files with the commission a resolution of its governing body rescinding the request for exemption, if the public utility serves more than two thousand five hundred customers within the city and the area of the city's extraterritorial zoning jurisdiction, or if the public utility requests rescinding the exemption for good cause, the commission may rescind the exemption granted under this section. The commission may require a public utility providing nonexempt natural gas distribution service to provide any exempted natural gas distribution service as a separate business entity.
6. Equipment covered by this section must be installed and maintained in compliance with the instructions provided by the manufacturer of any previously installed equipment to which it will be added. Appliances designed to use only a specific fuel may not be converted to use a different fuel if the manufacturer has prohibited the conversions.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 326

HOUSE BILL NO. 1373

(Representative Streytle)
(Senator Armstrong)

AN ACT to amend and reenact section 49-21-01.3 of the North Dakota Century Code, relating to essential telecommunications services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price changes from surcharges - Essential telecommunications services.

1. ~~All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures or resulting in relocation, change, or removal of facilities must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change, except price changes related to the costs of relocation, change, or removal of facilities are not subject to a thirty-day implementation requirement. This section does not prohibit the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no~~except a price change may not be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
2. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
 - a. Price increases may be accumulated up to a percentage total of five percent.
 - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
 - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
 - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.
 - e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.

3. This chapter does not prohibit an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission-approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 327

SENATE BILL NO. 2286

(Senators Schaible, Unruh)
(Representatives Nathe, Porter)

AN ACT to amend and reenact sections 49-22-03 and 49-22-14.1 and subsection 2 of section 49-22-16 of the North Dakota Century Code, relating to energy conversion and transmission facility siting; and to provide for a legislative management study regarding the consideration of local zoning ordinances and zoning provisions during the application and public hearing process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁵ **SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

49-22-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 or 12 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;

¹⁴⁵ Section 49-22-03 was also amended by section 6 of House Bill No. 1144, chapter 328.

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- (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;
 - (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
 - b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or

- [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
- 4. "Corridor" means the area of land in which a designated route may be established for a transmission facility.
 - 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 fifty megawatts of electricity;
 - 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;
 - d. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - e. Enrichment of uranium minerals.
 - 6. "Facility" means an energy conversion facility, transmission facility, or both.
 - 7. "Permit" means the permit for the construction of a transmission facility within a designated corridor issued under this chapter.
 - 8. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.

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9. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
11. "Route" means the location of a transmission facility within a designated corridor.
- ~~11-12.~~ "Site" means the location of an energy conversion facility.
- ~~12-13.~~ "Transmission facility" means any of the following:
- a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include:
 - (1) A temporary transmission line loop that is:
 - (a) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (c) In place for less than one year; or
 - (2) A transmission line that is less than one mile [1.61 kilometers] long.
 - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
 - (1) An oil or gas pipeline gathering system;
 - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (3) A pipeline that is less than one mile [1.61 kilometers] long.

For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
 - c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

~~13-14.~~ "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any energy conversion facility.

SECTION 2. AMENDMENT. Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-14.1. Cooperation with state and federal agencies and political subdivisions.

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein. The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22-16.

¹⁴⁶ **SECTION 3. AMENDMENT.** Subsection 2 of section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

2. a. A certificate of site compatibility for an energy conversion facility ~~shall~~may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and no site ~~shall~~may be designated which violates local land use, zoning, or building rules, regulations, or ordinances. A
- b. ~~Except as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor may supersede and preempt any local land use, or zoning, or building rules, regulations, or ordinances upon a finding by the commission that such rules, regulations, or ordinances, as applied to the proposed route,~~
- c. ~~Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules. Without such a finding by the commission, no route shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances.~~
- d. ~~When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is~~

¹⁴⁶ Section 49-22-16 was also amended by section 17 of House Bill No. 1144, chapter 328.

located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.

- e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - COOPERATION BETWEEN THE PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS. During the 2017-18 interim, the legislative management shall study cooperation and communication between the public service commission and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and public hearing process. The study must include examination of the impacts on relationships between landowners and the oil and gas industry; impacts on the efficiency of the siting process, including timelines associated with notification and permitting; impacts on the public input process; and impacts on compliance with, and enforcement of, political subdivision zoning ordinances. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 328

HOUSE BILL NO. 1144

(Representatives Keiser, Mock, Seibel)
(Senators Armstrong, Kreun, Oban)

AN ACT to create and enact section 49-22-08.2 and chapter 49-22.1 of the North Dakota Century Code, relating to gas and liquid energy conversion, gas and liquid transmission facility siting, and combining application; to amend and reenact sections 11-09.1-04, 17-05-09, and 32-15-21, subsection 18 of section 38-08-02, sections 49-07-01.1, 49-22-03, 49-22-04, 49-22-05.1, 49-22-07, and 49-22-07.2, subsection 1 of section 49-22-08, sections 49-22-08.1, 49-22-09, 49-22-09.1, 49-22-14, 49-22-16, 49-22-17, 49-22-19, 49-22-20, and 49-22-21, subdivision e of subsection 1 of section 49-22-22, subsection 2 of section 49-22-22, subsection 1 of section 54-17.7-08, and section 61-24.3-03 of the North Dakota Century Code, relating to energy conversion and transmission facility siting; to repeal sections 49-22-01 and 49-22-16.3 of the North Dakota Century Code, relating to energy conversion short title and route adjustment before or during construction for gas or liquid transmission line; to provide a continuing appropriation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-04. Ratification by majority vote - Supersession of existing charter and conflicting state laws - Filing of copies of new charter.

If a majority of the qualified electors voting on the charter at the election vote in favor of the home rule charter, it is ratified and becomes the organic law of the county on the first day of January or July next following the election, and extends to all its county matters. The charter and the ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city. The charter may not authorize the enactment of ordinances to diminish the authority of a board of supervisors of a township or to change the structure of township government in any organized civil township, without the consent of the board of supervisors of the township. No ordinance of a home rule county shall supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as ratified and approved must be filed with the secretary of state; one with the recorder for the county, unless the board of county commissioners designates a different official; and one with the auditor of the county to remain as a part of its permanent records. Courts shall take judicial notice of the charter.

SECTION 2. AMENDMENT. Section 17-05-09 of the North Dakota Century Code is amended and reenacted as follows:

17-05-09. Public service commission jurisdiction and consultation.

1. The authority and the transmission facilities built under this chapter, until sold or disposed of by the authority, are exempt from the provisions of title 49 except for ~~chapter~~ chapters 49-22 and 49-22.1. Upon sale or disposal by the authority, transmission facilities built under this chapter are subject to the provisions of title 49.
2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its transmission facilities and such rates must thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.
3. The authority shall conduct its activities in consultation with transmission providers, wind interests, the lignite research council, and other persons having relevant expertise.

SECTION 3. AMENDMENT. Section 32-15-21 of the North Dakota Century Code is amended and reenacted as follows:

32-15-21. Power of court.

1. The court shall have power:
 - a. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
 - b. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages for the property.
 - c. To determine the respective rights of different parties seeking condemnation of the same property.
2. Notwithstanding any other provision of law, if a route permit is required under chapter 49-22 or 49-22.1, the court may order the taking by eminent domain conditioned on the receipt of the route permit.

SECTION 4. AMENDMENT. Subsection 18 of section 38-08-02 of the North Dakota Century Code is amended and reenacted as follows:

18. "Underground gathering pipeline" means an underground gas or liquid pipeline with associated above ground equipment which is designed for or capable of transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas which is not subject to chapter 49-22 or 49-22.1. As used in this subsection, "associated above ground equipment" means equipment and property located above ground level, which is incidental to and necessary for or useful for transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas from a production facility. As used in this subsection, "equipment and property" includes a pump, a compressor, storage, leak detection or monitoring equipment, and any other facility or structure.

SECTION 5. AMENDMENT. Section 49-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty.

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22, ~~49-22.1~~, and 49-23, ~~shall~~, in addition to any other penalty provided, ~~be~~ subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

¹⁴⁷ **SECTION 6. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

49-22-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 or 12 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:

¹⁴⁷ Section 49-22-03 was also amended by section 1 of Senate Bill No. 2286, chapter 327.

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- (a) Of a new electric energy conversion facility;
 - (b) Of a new ~~gas, liquid, or~~ electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or ~~gas, liquid, or~~ electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing electric energy conversion facility or ~~gas, liquid, or~~ electric transmission facility; and
- (4) Before conducting any activities, the utility certifies in writing to the commission that:
- (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new ~~gas, liquid, or~~ electric transmission facility;
 - [3] To improve the existing electric energy conversion or ~~gas, liquid, or~~ electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or ~~gas, liquid, or~~ electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new ~~gas, liquid, or~~ electric transmission facility;
 - [3] To improve the existing electric energy conversion facility or ~~gas, liquid, or~~ electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or ~~gas, liquid, or~~ electric transmission facility; and

- (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
- (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
- (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land in which a designated route may be established for ~~a~~n electric transmission facility.
5. "~~Energy~~Electric 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; or
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity;
 - e. ~~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;~~
 - d. ~~Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or~~
 - e. Enrichment of uranium minerals.
6. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
- a. A temporary electric transmission line loop that is:
 - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
 - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (3) In place for less than one year; or

- ~~b. An electric transmission line that is less than one mile [1.61 kilometers] long.~~
- ~~7. "Facility" means an electric energy conversion facility, electric transmission facility, or both.~~
- ~~7-8. "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.~~
- ~~8-9. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.~~
- ~~9-10. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.~~
- ~~10-11. "Route" means the location of an electric transmission facility within a designated corridor.~~
- ~~11-12. "Site" means the location of an electric energy conversion facility.~~
- ~~12. "Transmission facility" means any of the following:~~
- ~~a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include:~~
- ~~(1) A temporary transmission line loop that is:~~
- ~~(a) Connected and adjacent to an existing transmission facility that was sited under this chapter;~~
- ~~(b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and~~
- ~~(c) In place for less than one year; or~~
- ~~(2) A transmission line that is less than one mile [1.61 kilometers] long.~~
- ~~b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:~~
- ~~(1) An oil or gas pipeline gathering system;~~
- ~~(2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or~~
- ~~(3) A pipeline that is less than one mile [1.61 kilometers] long.~~
- ~~For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first~~

~~pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.~~

- e. ~~A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.~~
13. ~~"Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.~~

SECTION 7. AMENDMENT. Section 49-22-04 of the North Dakota Century Code is amended and reenacted as follows:

49-22-04. Ten-year plans - Contents.

Each utility that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall develop a ten-year plan as specified in this section and submit the plan to the commission. Each utility shall file an updated plan on or before July first of each even-numbered year after the year of its initial submission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and must contain the following information:

1. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
2. An identification of the location of the tentative preferred site for all electric energy conversion facilities and the tentative location of all electric transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor identification shall be made in compliance with the criteria published by the commission pursuant to section 49-22-05.1.
3. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
4. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
5. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.

6. Any other relevant information as may be requested by the commission. Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

¹⁴⁸ **SECTION 8. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-05.1. Exclusion and avoidance areas - Criteria.

The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

SECTION 9. AMENDMENT. Section 49-22-07 of the North Dakota Century Code is amended and reenacted as follows:

49-22-07. Certificate of site compatibility or route permit required.

1. A utility may not begin construction of an electric energy conversion facility or an electric transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.
2. If a power emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated route, the owner of the line shall give telephonic notice to the commission in advance of the relocation. The line may then be relocated to restore power as soon as practicable. After the line has been relocated, the owner shall file with the commission a request to approve the relocated route.

SECTION 10. AMENDMENT. Section 49-22-07.2 of the North Dakota Century Code is amended and reenacted as follows:

49-22-07.2. Waiver of procedures and time schedules.

Any utility which proposes to construct an electric energy conversion facility or an electric transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to this chapter. The commission, after hearing and upon a finding that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects, or, after hearing and

¹⁴⁸ Section 49-22-05.1 was also amended by section 3 of Senate Bill No. 2313, chapter 63.

upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including, but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

SECTION 11. AMENDMENT. Subsection 1 of section 49-22-08 of the North Dakota Century Code is amended and reenacted as follows:

1. An application for a certificate ~~shall~~must be in such form as the commission may prescribe, containing the following information:
 - a. A description of the size and type of facility.
 - b. A summary of any studies which have been made of the environmental impact of the facility.
 - c. A statement explaining the need for the facility.
 - d. An identification of the location of the preferred site for any electric energy conversion facility.
 - e. An identification of the location of the preferred corridor for any electric transmission facility.
 - f. A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.
 - g. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - i. Such other information as the applicant may consider relevant or the commission may require.

SECTION 12. AMENDMENT. Section 49-22-08.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a route.

1. An application for a route permit for ~~aan~~ an electric transmission facility within a designated corridor ~~shall~~must be filed no later than two years after the issuance of the certificate and ~~shall~~must be in such form as the commission may prescribe, containing the following information:
 - a. A description of the type, size, and design of the proposed facility.
 - b. A description of the location of the proposed facility.

- c. An evaluation of the proposed route with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - d. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - e. A description of the right-of-way preparation and construction and reclamation procedures.
 - f. A statement setting forth the manner in which:
 - (1) The utility will inform affected landowners of easement acquisition, and necessary easement conditions and restrictions.
 - (2) The utility will compensate landowners for easements, without reference to the actual consideration to be paid.
 - g. Such other information as the utility may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the designated corridor is located.
 3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
 4. An application for an amendment of a permit shall be in such form and contain such information as the commission shall prescribe.
 5. The commission shall designate a route for the construction of aan electric transmission facility following the study and hearings provided for in this chapter. This designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application. The time for designation of a route may be extended by the commission for just cause. The failure of the commission to act within the time limit provided in this section shall not operate to divest the commission of jurisdiction in any permit proceeding. Upon designation of a route the commission shall issue a permit to the applicant with such terms, conditions, or modifications deemed necessary.

SECTION 13. Section 49-22-08.2 of the North Dakota Century Code is created and enacted as follows:

49-22-08.2. Combining application.

A utility may file a separate application for a certificate or a permit, or combined into one application.

SECTION 14. AMENDMENT. Section 49-22-09 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
2. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
4. Adverse direct and indirect environmental effects ~~which~~that cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
6. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
9. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
10. The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

SECTION 15. AMENDMENT. Section 49-22-09.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09.1. Approval of hydroelectric transmission facilities by legislative assembly required.

After compliance with the applicable requirements of this chapter, any hydroelectric transmission facility that transmits hydroelectric power produced outside the United States, and which crosses any portion of this state, must have the approval of the legislative assembly by concurrent resolution. A person may not begin construction of a hydroelectric transmission facility in this state ~~that~~which transmits hydroelectric power produced outside the United States, or exercise the right of

eminent domain in connection with such construction, without first having complied with this chapter and obtained the approval of the legislative assembly. This section ~~shall~~does not apply to any electric transmission facility for which a route permit and certificate of corridor compatibility has been issued prior to July 1, 1985, or any extension thereof issued after July 1, 1985.

SECTION 16. AMENDMENT. Section 49-22-14 of the North Dakota Century Code is amended and reenacted as follows:

49-22-14. Advisory committees - Appointment - Compensation.

The commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate sites or corridors considered for designation ~~shall~~must be composed of as many persons as may be appointed by the commission, but ~~shall~~must include a majority of public representatives; at least one representative from the state department of agriculture, a public or municipally owned utility, a private investor-owned utility, and a cooperatively owned utility; and one representative from each county and city in which an electric energy conversion facility or electric transmission facility is proposed to be located. Members of advisory committees ~~shall~~are entitled to be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

¹⁴⁹ **SECTION 17. AMENDMENT.** Section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2. A certificate of site compatibility for an electric energy conversion facility shall not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and no site shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances. A permit for the construction of ~~aan~~ an electric transmission facility within a designated corridor may supersede and preempt any local land use, zoning, or building rules, regulations, or ordinances upon a finding by the commission that such rules, regulations, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without such a finding by the commission, no route shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate electric energy conversion facilities and electric transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the electric energy conversion facility or the corridor or route designation for the electric transmission facility and with respect to other

¹⁴⁹ Section 49-22-16 was also amended by section 3 of Senate Bill No. 2286, chapter 327.

matters for which authority has been granted to the commission by this chapter.

4. No site or route shall be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position shall clearly state whether the site, corridor, or route being considered for designation will be in compliance with such agency's rules. For purposes of this chapter it shall be presumed that a proposed facility will be in compliance with a state agency's rules if such agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

SECTION 18. AMENDMENT. Section 49-22-17 of the North Dakota Century Code is amended and reenacted as follows:

49-22-17. Improvement of sites or locations.

Utilities ~~which that~~ have acquired an electric energy conversion facility site or electric transmission line route in accordance with the provisions of this chapter may proceed to construct or improve such site or route for the intended purposes at any time, subject to subsections 2 and 3 of section 49-22-16; provided, that if such construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, then the utility must certify to the commission that such site or route continues to meet the conditions upon which the certificate of site compatibility or electric transmission facility construction permit was issued.

SECTION 19. AMENDMENT. Section 49-22-19 of the North Dakota Century Code is amended and reenacted as follows:

49-22-19. Hearing - Judicial review.

Any party aggrieved by the issuance of a certificate of site compatibility or electric transmission facility construction permit from the commission, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, may request a rehearing by the commission. The hearing ~~shall~~must be conducted pursuant to chapter 28-32. There ~~shall be~~is a right of appeal to the district court from any adverse ruling by the commission.

SECTION 20. AMENDMENT. Section 49-22-20 of the North Dakota Century Code is amended and reenacted as follows:

49-22-20. Revocation or suspension of certificate or permit.

A certificate of site compatibility or permit for the construction of aan electric transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.
2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained therein.
3. Violation of the provisions of this chapter or rules or regulations issued pursuant to this chapter by the commission.

4. A determination by a district court pursuant to section 49-22-16.1.

SECTION 21. AMENDMENT. Section 49-22-21 of the North Dakota Century Code is amended and reenacted as follows:

49-22-21. Penalties.

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of an electric energy conversion facility or electric transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains an electric energy conversion facility or electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained therein is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter shall be guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct ~~shall be~~ subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day ~~that such~~ the violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of an electric energy conversion facility or an electric transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an electric energy conversion facility or an electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise ~~shall~~ must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

4. Notwithstanding any other provision of this chapter, the commission ~~may~~, by injunctive procedures, without bond or other undertaking, may proceed against any person who willfully engages in any conduct described in subsection 3. No liability shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

SECTION 22. AMENDMENT. Subdivision e of subsection 1 of section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

- e. An applicant certifying to the commission under subsection 3 of section 49-22-03 ~~or obtaining siting authority under subdivision b of subsection 2 or subdivision c of subsection 4 of section 49-22-16.3;~~ shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.

SECTION 23. AMENDMENT. Subsection 2 of section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. At the 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 electric energy conversion facility site, electric transmission facility corridor, or electric transmission facility route evaluation and designation process by the commission. ~~In no event shall the~~The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed electric transmission facility.

SECTION 24. Chapter 49-22.1 of the North Dakota Century Code is created and enacted as follows:

49-22.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in subsection 5 or 12 and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For a gas or liquid energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or

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- (c) For a gas or liquid transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
- (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
- (3) The activities are for the construction:
- (a) Of a new gas or liquid energy conversion facility;
- (b) Of a new gas or liquid transmission facility;
- (c) To improve the existing gas or liquid energy conversion facility, or gas or liquid, transmission facility; or
- (d) To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
- (4) Before conducting any activities, the utility certifies in writing to the commission that:
- (a) The activities will not affect any known exclusion or avoidance area;
- (b) The activities are for the construction:
- [1] Of a new gas or liquid energy conversion facility;
- [2] Of a new gas or liquid transmission facility;
- [3] To improve the existing gas or liquid energy conversion or gas or liquid transmission facility; or
- [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
- (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission:
- (a) The activities will not affect any known exclusion area;
- (b) The activities are for the construction:
- [1] Of a new gas or liquid energy conversion facility;
- [2] Of a new gas or liquid transmission facility;

plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or

- (3) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
- b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
8. "Permit" means the permit for the construction of a gas or liquid transmission facility within a designated corridor issued under this chapter.
9. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Route" means the location of a gas or liquid transmission facility within a designated corridor.
11. "Site" means the location of a gas or liquid energy conversion facility.
12. "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon products, including coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any gas or liquid energy conversion facility.

49-22.1-02. Statement of policy.

The legislative assembly finds the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. It is necessary to ensure the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and the welfare of the citizens of this state by prohibiting energy conversion facilities and transmission facilities from being located, constructed, or operated within this state without a certificate of site compatibility or a route permit acquired under this chapter. The policy of this state is to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. Sites and routes must be selected to minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and fulfilling energy needs in an orderly and timely fashion.

49-22.1-03. Exclusion and avoidance areas - Criteria.

The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. Except for oil and gas transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural

residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

49-22.1-04. Certificate of site compatibility or route permit required.

A utility may not begin construction of a gas or liquid energy conversion facility or gas or liquid transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.

49-22.1-05. Waiver of procedures and time schedules.

Any utility that proposes to construct a gas or liquid energy conversion facility or a gas or liquid transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to this chapter. The commission, after hearing and upon a finding that the proposed facility is of a length, design, location, or purpose that it will produce minimal adverse effects, or, after hearing and upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

49-22.1-06. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.

1. An application for a certificate must be in the form prescribed by the commission containing the following information:
 - a. A description of the size and type of facility.
 - b. A summary of any studies that have been made of the environmental impact of the facility.
 - c. A statement explaining the need for the facility.
 - d. An identification of the location of the preferred site for any gas or liquid energy conversion facility.
 - e. An identification of the location of the preferred corridor for any gas or liquid transmission facility.
 - f. A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.

- g. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22.1-09 and the criteria established pursuant to section 49-22.1-03.
 - i. Any other information as the applicant considers relevant or the commission may require.
 2. After determining the application is complete, the commission shall serve a notice of filing of the application on those persons and agencies the commission deems appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the site or corridor is proposed to be located.
 3. A copy of the application must be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
 4. An application for an amendment of a certificate must be in the form and contain the information as the commission prescribes.
 5. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation must be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22.1-03, and the considerations set out in section 49-22.1-09 in a finding with reasons for the designation, and must be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section does not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with the terms, conditions, or modifications deemed necessary.

49-22.1-07. Application for a permit - Notice of filing - Amendment - Designation of a route.

1. An application for a route permit for a gas or liquid transmission facility within a designated corridor must be filed no later than two years after the issuance of the certificate and must be in the form the commission prescribes, containing the following information:
 - a. A description of the type, size, and design of the proposed facility.
 - b. A description of the location of the proposed facility.

- c. An evaluation of the proposed route with regard to the applicable considerations set out in section 49-22.1-09 and the criteria established pursuant to section 49-22.1-03.
 - d. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - e. A description of the right-of-way preparation and construction and reclamation procedures.
 - f. A statement setting forth the manner in which:
 - (1) The utility will inform affected landowners of easement acquisition, and necessary easement conditions and restrictions.
 - (2) The utility will compensate landowners for easements, without reference to the actual consideration to be paid.
 - g. Any other information the utility considers relevant or the commission requires.
2. After determining the application is complete, the commission shall serve a notice of filing of the application on those persons and agencies the commission deems appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the designated corridor is located.
 3. A copy of the application must be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
 4. An application for an amendment of a permit must be in the form and contain the information the commission prescribes.
 5. The commission shall designate a route for the construction of a gas or liquid transmission facility following the study and hearings provided for in this chapter. This designation must be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22.1-03, and the considerations set out in section 49-22.1-06 in a finding with reasons for the designation, and must be made in a timely manner no later than six months after the filing of a completed application. The time for designation of a route may be extended by the commission for just cause. The failure of the commission to act within the time limit provided in this section does not operate to divest the commission of jurisdiction in any permit proceeding. Upon designation of a route the commission shall issue a permit to the applicant with the terms, conditions, or modifications deemed necessary.

49-22.1-08. Combining application.

A utility may file a separate application for a certificate or a permit, or combined into one application.

49-22.1-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

The commission is guided by, but is not limited to, the following considerations, when applicable, to aid the evaluation and designation of sites, corridors, and routes:

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
2. The effects of new gas or liquid energy conversion and gas or liquid transmission technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from a proposed gas or liquid energy conversion facility.
4. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects.
6. Irreversible and ir retrievable commitments of natural resources should the proposed site, corridor, or route be designated.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
9. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
10. The effect of the proposed site or route on areas that are unique because of biological wealth or because the site or route is a habitat for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

49-22.1-10. Public hearings - Notice.

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22.1-03, and the factors to be considered pursuant to section 49-22.1-09. When more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county may not be consolidated if five or more affected landowners in that county file a petition with the commission within ten days of the publication of the notice of hearing.
2. The commission is not required to hold a public hearing on an application for the transfer of a certificate or a permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a

public hearing in the official newspaper of each county in which any portion of the facility or the proposed site, corridor, or route is located. If requested by any interested person and good cause has been shown therefor, the commission shall hold a public hearing. If more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties.

3. One or more public hearings must be held at a location or locations determined by the commission concerning the following matters:
 - a. A substantial or material change in the criteria established pursuant to section 49-22.1-03.
 - b. A substantial or material change in the rules adopted pursuant to section 49-22.1-17.
 - c. The revocation or suspension of a certificate or permit.
4. Notice of a public hearing must be given by the commission by service on those persons the commission deems appropriate and twice by publication, once at least twenty days before the hearing and a second time within twenty days before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer, or a waiver must be given at the expense of the applicant. In an emergency the commission may notice a hearing upon less than twenty days.

49-22.1-11. Advisory committees - Appointment - Compensation.

The commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate sites or corridors considered for designation must be composed of as many persons as may be appointed by the commission, but must include a majority of public representatives; at least one representative from the state department of agriculture, a public or municipally owned utility, a private investor-owned utility, and a cooperatively owned utility; and one representative from each county and city in which a gas or liquid energy conversion facility or gas or liquid transmission facility is proposed to be located. Members of advisory committees are entitled to be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

49-22.1-12. Cooperation with state and federal agencies.

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter.

49-22.1-13. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.

1. The issuance of a certificate of site compatibility or a route permit is, subject to subsections 2 and 3, the sole site or route approval required to be obtained by the utility.

2. A certificate of site compatibility for an energy conversion facility does not supersede or preempt any local land use; zoning; or building rules, regulations, or ordinances, and a site may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances. A permit for the construction of a gas or liquid transmission facility within a designated corridor may supersede and preempt any local land use; zoning; or building rules, regulations, or ordinances, upon a finding by the commission that the rules, regulations, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without that finding by the commission, a route may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate gas or liquid energy conversion facilities and gas or liquid transmission facilities. A state agency in processing a utility's facility permit application is bound to the decisions of the commission with respect to the site designation for the gas or liquid energy conversion facility or the corridor or route designation for the gas or liquid transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
4. A site or route may not be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position must clearly state whether the site, corridor, or route being considered for designation will be in compliance with the agency's rules. For purposes of this chapter it is presumed a proposed facility will be in compliance with a state agency's rules if that agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

49-22.1-14. Unfair tactics in acquiring land or easements for a facility - Court action - Cancellation of easement - Penalty.

1. Any person employed by a public utility to acquire easements for a facility subject to this chapter may not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of the land to be affected by the facility to grant or agree to any easements.
2. If at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of the same utility, acquiring easements for a site or route of a facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, an action may be brought in the appropriate district court.
3. Upon a determination by the court that a person employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the court, by order, shall declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain the compensation, or award to the landowner up to three times the amount of the compensation involved as damages, punitive or compensatory. The court shall award costs and

reasonable attorney's fees to the plaintiff if the court rules in favor of the plaintiff.

4. Upon a determination by the court that the utility involved did knowingly allow, encourage, or operate in active consort or participation with a person utilizing an unfair tactic, the court shall cause a copy of its memorandum opinion or order to be filed with the commission.
5. Upon receiving a copy of a memorandum opinion or order issued by a district court pursuant to this section, the commission may revoke or suspend the permit issued with respect to the route affecting the aggrieved landowners. If a permit has not been issued with respect to a site or route affecting the aggrieved landowners, the commission may refuse to issue a permit for such portion of the route.

49-22.1-15. Route adjustment before or during construction for gas or liquid transmission line.

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
 - a. The construction activities will be within the designated corridor;
 - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
 - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of a gas or liquid transmission line within the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities are within the designated corridor;
 - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
 - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment, unless the utility previously received authorization from the commission for the impact to the avoidance area;
 - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause

- and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and
- (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
- b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
- a. Files with the commission certification and supporting documentation that:
- (1) The construction activities will not affect any known exclusion or avoidance areas;
- (2) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
- (3) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
- (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
- b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
4. Before or during construction, a utility may adjust the route of a gas or liquid transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
- a. Files with the commission certification and supporting documentation that:
- (1) The construction activities will not affect any known exclusion areas;
- (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
- (3) The utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist;

- (4) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (5) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
 - (6) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
- b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
 - c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
5. The commission is not required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

49-22.1-16. Improvement of sites or locations.

Utilities that have acquired a gas or liquid energy conversion facility site or gas or liquid transmission line route in accordance with this chapter may proceed to construct or improve such site or route for the intended purposes at any time, subject to subsections 2 and 3 of section 49-22.1-13; provided, that if the construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, the utility must certify to the commission that the site or route continues to meet the conditions upon which the certificate of site compatibility or gas or liquid transmission facility construction permit was issued.

49-22.1-17. Rules and regulations.

The commission shall adopt rules in conformity with this chapter and prescribe methods and procedures required therewith.

49-22.1-18. Hearing - Judicial review.

Any party aggrieved by the issuance of a certificate of site compatibility or gas or liquid transmission facility construction permit from the commission, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, may request a rehearing by the commission. The hearing must be conducted pursuant to chapter 28-32. There is a right of appeal to the district court from any adverse ruling by the commission.

49-22.1-19. Revocation or suspension of certificate or permit.

A certificate of site compatibility or permit for the construction of a gas or liquid transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.

2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained in the certificate or permit.
3. Violations of this chapter or rules adopted pursuant to this chapter by the commission.
4. A determination by a district court pursuant to section 49-22.1-14.

49-22.1-20. Penalties.

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of a gas or liquid energy conversion facility or gas or liquid transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains a gas or liquid energy conversion facility or gas or liquid transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained in the certificate or permit is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter is guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each violation for each day the violations persist, except the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of a gas or liquid energy conversion facility or a gas or liquid transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains a gas or liquid energy conversion facility or a gas or liquid transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.
4. The civil penalty provided for in subsection 3 may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.
5. Notwithstanding any other provision of this chapter, the commission may, by injunctive procedures, without bond or other undertaking, proceed against any person that willfully engages in any conduct described in subsection 3. No liability may accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

49-22.1-21. Siting process expense recovery - Deposit in special fund - Continuing appropriation.

1. Every applicant under this chapter shall pay to the commission an application fee:
 - 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 facility.
 - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.
 - c. An applicant for a waiver shall pay the amount that 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, the application fee paid must 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 49-22.1-01 or obtaining siting authority under subdivision b of subsection 2 or subdivision c of subsection 4 of section 49-22.1-15, shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
2. At the request of the commission and with the approval of the emergency commission, the applicant shall pay any additional fees as are reasonably necessary for completion of the gas or liquid energy conversion facility site, gas or liquid transmission facility corridor, or gas or liquid transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed gas or liquid transmission facility.
3. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.

49-22.1-22. Safety.

Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the national electrical safety code in effect at the time of construction of the generation.

SECTION 25. AMENDMENT. Subsection 1 of section 54-17.7-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Until sold or disposed of by the authority, the authority and the pipeline facilities built under this chapter are exempt from the provisions of title 49 except for ~~chapter~~chapters 49-22 and 49-22.1 and sections 49-02-01.2 and 49-07-05.1. Upon sale or disposal by the authority, pipeline facilities built under this chapter are subject to the provisions of title 49.

SECTION 26. AMENDMENT. Section 61-24.3-03 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-03. Authorization of southwest pipeline project.

The preliminary designs for a water supply facility for supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River for multiple uses, as set forth in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, are hereby confirmed and approved, under the designation of the southwest pipeline project, and the construction of the southwest pipeline project shall be initiated and completed by the state water commission substantially in accordance with plan B of the engineering preliminary design final report, state water commission project no. 1736, dated September 1982, except as otherwise specifically provided in this chapter. The commission shall have the authority to eliminate the construction of any primary or secondary transmission mains which are part of plan B of the engineering preliminary design final report if the water user entities to be served by the primary or secondary transmission mains do not execute water service contracts for the purchase of a sufficient quantity of water, as determined by the commission, to justify the construction of the primary or secondary transmission mains. ~~Chapter~~Chapters 49-22 and 49-22.1 shall not apply to this chapter. The right of way is hereby given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state.

SECTION 27. REPEAL. Sections 49-22-01 and 49-22-16.3 of the North Dakota Century Code are repealed.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 329

HOUSE BILL NO. 1378

(Representatives Johnston, Headland, Kiefert, Simons)
(Senator Clemens)

AN ACT to create and enact a new section to chapter 49-22 of the North Dakota Century Code, relating to light-mitigating technology systems on wind energy conversion facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

Light-mitigating technology system - Rules.

1. The commission shall adopt rules by January 1, 2019, relating to the implementation of light-mitigating technology systems on wind energy conversion facilities. The rules must be consistent with the federal aviation administration regulations [14 CFR 1.1 et seq.] and must include service and maintenance requirements, safety standards, and lighting system requirements.
2. By December 31, 2019, every wind energy conversion facility for which the commission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission.
3. By December 31, 2021, every wind energy conversion facility for which the commission issued a certificate of site compatibility before June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with the rules adopted by the commission. After public hearing, the commission may grant an extension of time based on technical or economic feasibility considerations.
4. Any costs associated with the implementation, operation, and maintenance of light-mitigating technology systems is the sole responsibility of the wind energy conversion facility owner.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 330

HOUSE BILL NO. 1026

(Legislative Management)
(Economic Impact Committee)

AN ACT to create and enact section 49-23-04.1 of the North Dakota Century Code, relating to survey of areas having underground facilities; to amend and reenact sections 49-23-01, 49-23-03, 49-23-04, 49-23-05, and 49-23-06 of the North Dakota Century Code, relating to location of underground facilities before excavation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-23-01 of the North Dakota Century Code is amended and reenacted as follows:

49-23-01. Definitions.

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

1. "Abandoned" means no longer in service and physically disconnected from a portion of the facility or from any other facility that is in use or still carries services.
2. "Board" means the board of directors of the nonprofit corporation governing the notification center under section 49-23-03.
3. "Careful and prudent manner" means:
 - a. Manually excavating within twenty-four inches [60.96 centimeters] of the outer edges of ~~any~~ underground facility on a horizontal plane as located manually and marked by the owner or operator by stakes, paint, or other customary manner; and supporting
 - b. Supporting and protecting the uncovered facility.
4. "Damage" means:
 - a. Substantial weakening of structural or lateral support of an underground facility;
 - b. Penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or
 - c. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.
5. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

6. "Emergency responder" means a fire department, a law enforcement officer, or other emergency rescue service.
7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:
 - a. Opening a grave in a cemetery.
 - b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
 - c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
 - d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
 - e. Normal repair and maintenance of track and track bed by a railroad on its own right of way.
8. "Excavator" means a person who conducts excavation.
9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is observed on the preceding Friday as if the Friday were the actual holiday, and when a holiday falls on a Sunday, it is observed on the following Monday as if the Monday were the actual holiday.
10. "Local governmental unit" means a county, township, or city.
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.
12. "Locate period" means the later of:
 - a. The forty-eight hour period beginning at 12:01 a.m. of the day after the location request was submitted to the notification center; excluding any Saturday, Sunday, or holiday; and any twenty-four hour extension provided through the notification center; or
 - b. The period between the submission of a location request to the notification center and the noted date and time of excavation.
13. "Nonprofit corporation" means a corporation established under chapter 10-33.
- 13-14. "Notification center" means a center that receives notice from an excavator of planned excavation or any other request for location and transmits this notice to a participating operator.

- 44-15. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local governmental entity. The department of transportation is considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.
16. "Positive response" means notification by the operator to the notification center that underground facilities within the area covered by a location request have been marked or cleared.
- 45-17. "Tangible marking materials" means any material perceptible by touch used to mark the location of an underground facility, including flags, stakes, poles, or other materials inserted into or affixed to the ground. The term does not include paint, chalk, or other liquid ink-based materials applied to the ground.
- 46-18. "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.
- 47-19. "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.
- 48-20. "Water" includes potable water, wastewater, and storm water.

SECTION 2. AMENDMENT. Section 49-23-03 of the North Dakota Century Code is amended and reenacted as follows:

49-23-03. Notification center - Participation - Establishment.

1. An operator shall participate in and share in the costs of the statewide notification center operated by a vendor selected under this section.
2. ~~A~~ A person doing business as an excavator licensed or operator under this chapter shall participate in and share in the costs of a statewide notification center on a per-call basis. An operator, installing the operator's own facilities, may not be charged as an excavator.
3. An operator shall participate in and share the costs of the one-call excavation notice system by:
 - a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity;
 - b. Updating the information provided to the notification center on a timely basis;

- c. Installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
 - d. Paying the costs charged by the notification center on a timely basis; and
 - e. Receiving and responding to excavation notices, including emergency notices.
4. A nonprofit corporation, North Dakota one-call, incorporated, shall govern the notification center. ~~The initial incorporators of the corporation may solicit bids for any services provided for the operation of the center. The corporation shall provide advance notice of the first organizational meeting by publication in qualified legal newspapers and in appropriate trade journals and by written notice to all appropriate trade associations.~~
- a. ~~The nonprofit corporation must be incorporated by seventeen initial incorporators, with one member representing the house of representatives and one member representing the senate appointed by the legislative management, one member representing telecommunications companies offering local exchange service to fewer than fifty thousand subscribers, one member representing telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunications services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as provided for members of committees of the legislative management. The legislative council shall pay the compensation for the legislative members.~~
 - b. The board of directors of the nonprofit corporation which consists~~North Dakota one-call, incorporated must consist~~ of ~~eight~~nine members representing the participants in the center. The members of the board of directors must be chosen and serve for terms as provided in the bylaws of the corporation. One member of the board of directors must be chosen by representatives of each of the following participant groups:
 - (1) Telecommunications service providers.
 - (2) Gas distribution lines operators.
 - (3) Oil or gas transmission or gathering lines operators.

- (4) Electrical transmission and distribution operators.
 - (5) Rural water systems.
 - (6) Cities of five thousand or more population.
 - (7) Cities of fewer than five thousand population.
 - (8) Cable television service providers.
 - (9) Excavators.
- b. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids, if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.
- c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to by the negligence of the board member or agent.
- d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction to enjoin violations of this chapter without proof that anyone suffered actual damages.
- e. ~~The notification center must be in operation by March 1, 1998.~~

SECTION 3. AMENDMENT. Section 49-23-04 of the North Dakota Century Code is amended and reenacted as follows:

49-23-04. Excavation.

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice ~~at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension.~~ An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice. The notice must contain:
 - a. The name, address, and telephone number of the person making the notification;
 - b. The name, address, and telephone number of the excavator;

- c. The date and time when excavation is scheduled to begin;
 - d. The depth of planned excavation;
 - e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
 - f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
 - g. The location of the excavation by any one or more of the following means:
 - (1) A specific street address;
 - (2) A reference to a platted lot number of record;
 - (3) An identifiable roadway or roadway intersection; or
 - (4) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.
 - h. ~~If the location of the excavation is too large or complex to be clearly and adequately identified by description in the location request~~
2. ~~Unless otherwise exempted, the excavator shall provide additional location ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other appropriate means agreed upon by the parties to the ticket. An excavator may not be required to provide additional location information if the excavator plans a meeting with the affected operators at the location of the excavation before beginning any excavation, or if the notice given under this section includes a specific street address or reference to a platted lot number of record of the location of the excavation. Site identification under this subsection is not required if:~~
- a. The precise location of excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record;
 - b. The precise location of excavation can be clearly and adequately identified on the location notice and the excavation is an emergency excavation; or
 - c. Prior to any excavation, the excavator requests and conducts a meeting with the affected operators at the location of the excavation.
- i-3. ~~A request for location is limited to the area to be excavated during the twenty-one day period following the location request an area not exceeding three contiguous city blocks within an urban area or an area of four contiguous quarter sections or five linear miles [8.05 kilometers] in a rural area.~~
- j-4. ~~An excavator may begin excavation in a location if the location period has passed without notification of a requested extension or prior to the expiration~~

~~of the location period if when the excavator has received notice that all facilities have been located or cleared or at the expiration of the location period or extension of the location period.~~

2.5. The notification center shall:

- a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.
- b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.
- c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given.
- d. Establish procedures for assuring positive response from the affected operator in all emergency excavation notices.
- e. Establish procedures to receive from operators and convey to ticket holders positive response when operators have located or cleared underground facilities identified within the area of a location request.

- 3.6.
- a. ~~An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.~~
 - b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. An operator of a facility required to be locatable is responsible for the costs of location. If an excavator is unable to locate a facility within two feet on either side of the operator's facility location markings and requests assistance from the operator to locate the facility, but the operator fails to provide the requested assistance within a reasonable time, the operator is responsible for the excavator's reasonable costs incurred to locate the facility. This subdivision does not apply to an underground facility to convey water installed before August 1, 2013.
 - c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.

- d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.
- e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.
- f. After facilities are located by an operator, an excavator shall notify the notification center if:
 - (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
 - (2) The markings have been obliterated or obscured;
 - (3) Weather conditions have impeded visibility of the markings;
 - (4) The site shows evidence of recent excavation; or
 - (5) The excavator has other reason to believe the markings are incorrect or missing.
- g. An excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.
- h. If excavation has not occurred within the initial twenty-one days of the locate, the excavator shall request that the facility be relocated before excavating unless other arrangements have been made with the underground facility owner. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location. If the issue of whether excavation has occurred is disputed for purposes of this section, the excavator bears the burden of proof that excavation has occurred.
- i. If a relocate request is made for an area which includes areas where excavation has been completed, a request for relocate must be modified from the original locate request to reflect only the area to be excavated during each subsequent twenty-one-day period, otherwise the excavator is responsible for reasonable costs associated with relocating facilities in the location.
- j. An excavator that makes repeated location requests within the area of a previously made location request due to the excavator's failure to reasonably maintain and remove markings under subsection 3 of section 49-23-05 or failure to follow prudent and careful digging practices required by subsection 5 of section 49-23-05 is responsible for reasonable costs of location and removal if the public service commission determines the additional location request was caused by the excavator's failure described in this subdivision.

- k. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.
- ~~k-l.~~ A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.
- l-m. An underground facility owner shall make all new facilities locatable.
- n. An operator that has completed marking of the excavation area or has determined there are no facilities in the area identified in the ticket shall provide positive response to the notification center in compliance with the notification center's procedures established under subsection 5 for assuring positive response from operators.
- 4-7. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

SECTION 4. Section 49-23-04.1 of the North Dakota Century Code is created and enacted as follows:

49-23-04.1. Survey.

1. An individual making a request for location for information, design, or purposes other than excavation shall contact the notification center for a survey location. The survey notice must contain:
- a. The name, address, and telephone number of the person making the notification;
 - b. The name, address, and telephone number of the surveyor;
 - c. The date and time information will be captured;
 - d. The depth of any planned future excavation;
 - e. The type and extent of any planned future excavation, including whether it involves tunneling or horizontal boring;
 - f. Whether the use of explosives is anticipated;
 - g. Any other information the notification center requires;
 - h. The location of the area to be surveyed by one of the following means:

- (1) A specific street address;
 - (2) A reference to a platted lot number of record;
 - (3) An identifiable roadway or roadway intersection; or
 - (4) A specific quarter section by section number, range, township, and county. In this case, the location must be further described by coordinates measured in feet from the nearest quarter section corner or section corner.
2. Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket. Site identification under this subsection is not required if:
 - a. The precise location of planned future excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record; or
 - b. Prior to any survey, the excavator requests and conducts a meeting with the affected operators at the location of the survey.
3. The notification center shall:
 - a. Immediately transmit the information contained in a survey notice to every operator that has an underground facility in the survey area; and
 - b. Inform the individual who made the survey location request of the names of participating operators of underground facilities to whom the notice will be given.
4. Within five days, excluding Saturdays, Sundays, and holidays; an operator with a facility within the survey area shall locate or mark the facilities physically, provide location information electronically, or meet with the ticket holder.
5. Meetings may be held at the discretion of the ticket holder.
6. Electronic information may be exchanged at the discretion of the operator.
7. The survey ticket holder shall assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings until the survey information has been captured, and remove all tangible marking materials used to mark the facility and the site area upon completion of the capture.
8. The survey ticket holder is responsible for the reasonable costs of any relocate after a survey location has been properly located and marked.

SECTION 5. AMENDMENT. Section 49-23-05 of the North Dakota Century Code is amended and reenacted as follows:

49-23-05. Precautions to avoid damage.

To avoid damage to and minimize interference with underground facilities in and near the construction excavation area, an excavator ticket holder shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and remove all tangible marking materials used to mark the underground facility and site area upon completion of the excavation.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

SECTION 6. AMENDMENT. Section 49-23-06 of the North Dakota Century Code is amended and reenacted as follows:

49-23-06. Damage to facilities - Penalty.

1. a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
- b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
- c. An excavator who knowingly is guilty of a class A misdemeanor if the excavator damages an underground facility or its protective covering and knew or reasonably should have known the damage occurred and who;
 - (1) The excavator does not notify the operator as soon as reasonably possible; or who
 - (2) The excavator backfills in violation of subdivision b is guilty of a class A misdemeanor.

2. a. If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of location, repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
- b. Reimbursement to the operator under this subsection is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 49-23-03 and 49-23-04.

Approved March 9, 2017

Filed March 9, 2017

PUBLIC WELFARE

CHAPTER 331

HOUSE BILL NO. 1136

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to substance use disorder treatment voucher system; to amend and reenact subsections 4 and 5 of section 50-01.2-03, subsection 1 of section 50-06-01.4, sections 50-06-05.1 and 50-06-05.2, subsection 1 of section 50-06-05.3, sections 50-06-05.5 and 50-06-06.6, subsection 1 of section 50-06-20, sections 50-06-23, 50-06-24, and 50-06-29, and subsection 1 of section 50-06-34 of the North Dakota Century Code, relating to departmental updates for statutory consistency, technical corrections, powers and duties of the department, department structure, program activities, regional human service centers, leases, and aging and disability resource center funding; and to repeal sections 50-06-01.5, 50-06-36, 50-06-39, and 50-08.1-01 of the North Dakota Century Code, relating to office and office equipment, developmental disability provider review, expedited ratesetting process, and coordinating services for pregnant women; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 50-01.2-03 of the North Dakota Century Code are amended and reenacted as follows:

4. Subject to subsection ~~4716~~ of section 50-06-05.1, administer the supplemental nutrition assistance program in the county under the direction and supervision of the department of human services in conformity with the Food Stamp Act of 1964, as amended, and enter into an agreement for administering the supplemental nutrition assistance program with the department of human services.
5. Subject to subsection ~~4918~~ of section 50-06-05.1, administer the home energy assistance program in the county under the direction and supervision of the department of human services and to enter into an agreement for administering the home energy assistance program with the department of human services.

¹⁵⁰ **SECTION 2. AMENDMENT.** Subsection 1 of section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

1. The department includes the state hospital, the regional human service centers, a vocational rehabilitation unit, and other units or offices and administrative and fiscal support services as the executive director determines

¹⁵⁰ Section 50-06-01.4 was also amended by section 3 of House Bill No. 1117, chapter 332, and section 2 of Senate Bill No. 2039, chapter 353.

necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

- a. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, children's trust fund, state youth authority, licensure of ~~day care homes and facilities~~ early childhood programs, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
- b. Administration of programs for individuals with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
- c. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult ~~family~~ foster care homes, and the committee on aging, ~~and the fund matching program for city or county tax levies for senior citizen activities and services.~~
- d. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
- e. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.
- f. Administration of economic assistance programs, including temporary assistance for needy families, the supplemental nutrition assistance program, ~~fuel~~ home energy assistance, child support ~~enforcement~~, refugee assistance, work experience, work incentive, and quality control.
- g. Administration of medical service programs, including medical assistance ~~for needy persons~~, children's health insurance program, Medicaid waivers, early and periodic screening, diagnosis and treatment, utilization control, autism services, and claims processing.

¹⁵¹ **SECTION 3. 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.

¹⁵¹ Section 50-06-05.1 was also amended by section 16 of House Bill No. 1041, chapter 108.

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~~human services related 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.~~10. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department, including ~~child care facilities~~early childhood programs, nonmedical adult care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
- ~~12.~~11. To permit the making of any surveys of human service needs and activities if determined to be necessary.

- 43-12. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
- 44-13. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, county social service board, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the life skills and transition center, state hospital, or North Dakota youth correctional center.
- 45-14. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court, ~~all reports to be kept confidential for the use of the judge except as may be disclosed by the judge.~~
- 46-15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case, ~~all reports to be kept confidential for use by the judge except as may be disclosed by the judge.~~
- 47-16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise county administration of that program. Provided, however, that the 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. Unless at least seven years has elapsed since the most recent felony conviction that has as an element the possession, use, or distribution of a controlled substance, the department shall deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].
- 48-17. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing assistance payments, and rental subsidies under any rental assistance programs initiated by the federal government not otherwise by law made the responsibility of another state agency possessing statewide jurisdiction.
- 49-18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise county administration of

that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a 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.

~~20-19.~~ To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.

~~21-20.~~ To exercise and carry out any other powers and duties granted the department under state law.

~~22.~~ To coordinate services for pregnant women.

~~23-21.~~ To administer, allocate, and distribute any funds made available for the payment of transitional living services, to develop standards and conduct needs assessments regarding transitional living services, to develop or approve and to evaluate demonstration projects offering transitional living programs, to approve transitional living facilities for the purpose of providing foster care, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection. For purposes of this subsection:

- a. "Transitional living facility" means a specific site, which is identified by a licensed child-placing agency or residential child care facility and which is approved by the department, for the provision of transitional living services.
- b. "Transitional living program" means a program that provides transitional living services and may include an identified program operations location approved by the department.
- c. "Transitional living services" may include housing, supervision, and supportive services intended and designed to assist persons who have received foster care services and who have reached age seventeen, but who have not reached age twenty-one, to achieve independence and self-sufficiency.

~~24-22.~~ With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section

thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:

- a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the life skills and transition center.
- b. The transaction is exempt from the provisions of section 50-06-06.6.
- c. The term of any lease may not exceed ninety-nine years.
- d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
- e. Any funds realized by any transaction must be deposited in the state's general fund.

25-23. 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.

26-24. 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.

27-25. For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.

28-26. 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.

¹⁵² **SECTION 4. AMENDMENT.** Section 50-06-05.2 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.2. Regional human service centers - Licensure - Collocation with county social service boards.

Human services must be delivered through regional human service centers in the areas designated by the governor's executive order 1978-12 dated October 5, 1978. Services provided by regional human service centers must include those services formerly provided by mental health and retardation service units and area social service centers. The regional human service centers are subject to licensing by the

¹⁵² Section 50-06-05.2 was also amended by section 3 of Senate Bill No. 2039, chapter 353.

department. The department shall adopt rules and standards for the licensing and operation of the regional human service centers. No human service center may operate without a license issued hereunder. Regional human service centers are authorized to receive federal and other funds available to finance, in whole or in part, the services and operations of the centers. ~~Any county social service board collocating its offices with a regional human service center must, within the limits of legislative appropriations, be reimbursed up to fifty percent of the amount expended for space costs in excess of the amount provided by the federal government.~~

¹⁵³ **SECTION 5. AMENDMENT.** Subsection 1 of section 50-06-05.3 of the North Dakota Century Code is amended and reenacted as follows:

1. Regional human service centers organized under this chapter are those centers established to provide human services as authorized by law. The term "human service" means service provided to individuals or their families in need thereof to help them achieve, maintain, or support the highest level of personal independence and economic self-sufficiency, ~~including health, mental health, education, manpower, social, food and nutrition, and housing service.~~ Regional human service centers shall function as regional administrative units established, ~~within the multicounty areas designated by the governor's executive order 1978-12 dated October 5, 1978, to provide for the planning and delivery of human services.~~

SECTION 6. AMENDMENT. Section 50-06-05.5 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.5. Director of regional center - Medical director.

Each regional human service center must be headed by a regional director appointed by the executive director of the department. The regional director must be accountable to the executive director or the director's designee. Each regional director may employ the staff necessary to discharge the center's responsibilities. A regional director, subject to the approval of the executive director of the department or the director's designee, and within the limit of legislative appropriations, may make contractual arrangements with public or private agencies or with individuals and organizations to discharge the regional human service center's service delivery responsibilities. Each regional director shall hire a qualified medical professional who must be designated as the medical director of the center. The medical director is responsible for coordinating mental health and medically related services. The medical director's position may be part time or full time as determined appropriate by the regional director, with the concurrence of the executive director or the director's designee. ~~The executive director or the director's designee may appoint the regional director of a center to be the medical director of that center, provided the regional director is qualified to be the medical director.~~ As used in this section, "qualified medical professional" means ~~an individual possessing a degree of doctor of psychiatry a board-eligible or board-certified psychiatrist,~~ when such an individual can be employed, and when this is not possible, an individual possessing at least a medical degree.

SECTION 7. AMENDMENT. Section 50-06-06.6 of the North Dakota Century Code is amended and reenacted as follows:

¹⁵³ Section 50-06-05.3 was also amended by section 4 of Senate Bill No. 2039, chapter 353.

50-06-06.6. Department of human services may lease real and personal property.

The executive director of the department of human services may lease surplus farm and pastureland at the state hospital and the life skills and transition center. The executive director also may enter into further leases of real or personal property at the life skills and transition center or the state hospital upon a specific finding that the granting of each such leasehold interest, ~~except those relating to child care services,~~ will result in a net economic gain for the department, taking into account all identifiable costs. Any lease of space for the purpose of providing child care services must meet requirements as determined by the department. The executive director may prescribe the terms and conditions of any leases entered into pursuant to this section and may renew existing leases. Any lease entered into must be subject to renewal or cancelable each biennium. ~~Any lease or lease renewal of unneeded building or building space may be made only after consultation with the administrator of the state fire and tornado fund.~~

¹⁵⁴ **SECTION 8. AMENDMENT.** Subsection 1 of section 50-06-20 of the North Dakota Century Code is amended and reenacted as follows:

1. The state shall bear the cost, in excess of the amount provided by the federal government, of:
 - a. As provided in section 50-24.1-14, medical assistance services provided under chapter 50-24.1;
 - b. Energy assistance program benefits provided under subsection ~~49~~18 of section 50-06-05.1;
 - c. Supplements provided under chapter 50-24.5 as basic care services;
 - d. Services, programs, and costs listed in section 50-09-27;
 - e. Welfare fraud detection programs; and
 - f. Special projects approved by the department and agreed to by any affected county social service board.

¹⁵⁵ **SECTION 9. AMENDMENT.** Section 50-06-23 of the North Dakota Century Code is amended and reenacted as follows:

50-06-23. Placement of children - Least restrictive care.

The department and county social service boards shall thoroughly explore the option of kinship care when a child is unable to return home due to safety concerns. Absent kinship options, the department and county social service boards shall provide permanency options that are in the least restrictive care and near the family's home as required by the federal Adoption and Safe Family Act of 1997 [Pub. L. 105-89; 111 Stat. 2115; 42 U.S.C. 671]. ~~Before January 1, 2006, the department of human services shall issue a request for proposal for the provision of residential treatment services to meet the needs of youth with a history of sexual offenses within the state~~

¹⁵⁴ Section 50-06-20 was also amended by section 9 of Senate Bill No. 2039, chapter 353.

¹⁵⁵ Section 50-06-23 was repealed by section 10 of Senate Bill No. 2039, chapter 353.

and explore options of therapeutic foster care for those youth who would benefit from this service level.

SECTION 10. AMENDMENT. Section 50-06-24 of the North Dakota Century Code is amended and reenacted as follows:

50-06-24. Guardianship services.

The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case program management services. The system must include a base unit funding level at the same level as developmental disability corporate guardianship rates, provider standards, staff competency requirements, and guidelines and training for guardians. The department shall adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

SECTION 11. AMENDMENT. Section 50-06-29 of the North Dakota Century Code is amended and reenacted as follows:

50-06-29. Application for aging and disability resource center funding.

~~No later than December 31, 2007, the~~The department of human services shall seek federal funds for the planning and implementation of ~~operate~~ an aging and disability resource center for the state. The resource center will be a single point of information program at the community level which will help people make informed decisions about the full range of long-term care service and support options, including both institutional and home and community-based care, and which will provide unbiased information and assistance to individuals needing either public or private resources, to professionals seeking assistance on behalf of their clients, and to individuals planning for their future long-term care needs. ~~Upon receipt of federal funds, the department of human services may establish the aging and disability resource center or it may request bids and award a contract for the provision of this service. The duties of the aging and disability resource center must include all duties required to receive federal funds, including providing information about the full range of long-term care service and support options available in the state to assure that consumers may make informed decisions about their care. The resource center must be free from a conflict of interest which would inappropriately influence or bias the actions of a contractor, staff member, board member, or volunteer of the resource center to limit the information given to a consumer to steer the consumer to services that may also be provided by the resource center.~~

SECTION 12. AMENDMENT. Subsection 1 of section 50-06-34 of the North Dakota Century Code is amended and reenacted as follows:

1. The department shall develop, within current appropriations, a program for services to transition-aged youth at risk. The department shall use a wraparound planning process. The department shall adopt rules to establish eligibility, services, and a distinct statewide interagency advisory council on transition-aged youth at risk, with youth and family representation, and with regional subcommittees. For the purposes of this section, "transition-aged youth" means children and young adults at risk due to:
 - a. Deprivation or other activities resulting in youth being involved with the foster care or juvenile justice system;

- b. Serious mental illness or serious disabilities that do not qualify the youth for developmental disabilities easeprogram management; or
- c. Suicidal tendencies.

SECTION 13. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

The department shall establish and administer, within the limits of legislative appropriations, a voucher system to address underserved areas and gaps in the state's substance abuse treatment system and to assist in the payment of addiction treatment services provided by private licensed substance abuse treatment programs and hospital, or medical clinic, based programs for medical management of withdrawal. Services eligible for the voucher program include only those levels of care recognized by the American society of addiction medicine, with particular emphasis given to underserved areas and programs. The department shall ensure that a private licensed substance abuse treatment program, hospitals, and medical clinic programs accepting vouchers collects and reports process and outcome measures. The department shall develop requirements and provide training and technical assistance to a private licensed substance abuse treatment program, hospitals, and medical clinic programs accepting vouchers. A private licensed substance abuse treatment program, hospital, and medical clinic program accepting vouchers shall provide evidence-based services.

SECTION 14. REPEAL. Sections 50-06-01.5, 50-06-36, 50-06-39, and 50-08.1-01 of the North Dakota Century Code are repealed.

SECTION 15. EMERGENCY. Section 13 of this Act is declared to be an emergency measure.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 332

HOUSE BILL NO. 1117

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 14-10-17 and 25-10-01.1, subdivision e of subsection 1 of section 50-06-01.4, and sections 50-06-01.7, 50-06-06.5, and 50-31-07 of the North Dakota Century Code, relating to changes in terminology with respect to substance abuse and behavioral health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-10-17 of the North Dakota Century Code is amended and reenacted as follows:

14-10-17. Minors - Treatment for sexually transmitted disease - ~~Drug abuse - Alcoholism~~ Substance use disorder.

Any person of the age of fourteen years or older may contract for and receive examination, care, or treatment for sexually transmitted disease, ~~alcoholism, or drug abuse or substance use disorder~~ without permission, authority, or consent of a parent or guardian.

SECTION 2. AMENDMENT. Section 25-10-01.1 of the North Dakota Century Code is amended and reenacted as follows:

25-10-01.1. Unified mental health delivery system.

The ~~division of mental health services~~ behavioral health division shall plan, develop, implement, and supervise a unified mental health delivery system. The system must include the mental health services provided by the regional human service centers, the state hospital, and contracted services with providers in accordance with the state mental health plan.

¹⁵⁶ **SECTION 3. AMENDMENT.** Subdivision e of subsection 1 of section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

- e. Administration of ~~alcohol and drug abuses~~ substance use disorder treatment programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, early intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.

SECTION 4. AMENDMENT. Section 50-06-01.7 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.7. ~~Mental~~ Behavioral health division - Administration.

¹⁵⁶ Section 50-06-01.4 was also amended by section 2 of House Bill No. 1136, chapter 331, and section 2 of Senate Bill No. 2039, chapter 353.

The department of human services shall administratively restructure the ~~mental/behavioral~~ health division to require the division to develop and revise, when necessary, the state mental health plan and provide the ~~mental/behavioral~~ health division the authority to implement and supervise a unified mental health delivery system and to assure the mental health services provided by the human service centers, the state hospital, and contracted services are in accordance with the state plan.

¹⁵⁷ **SECTION 5. AMENDMENT.** Section 50-06-06.5 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.5. Continuum of services for chronically mentally ill individuals with serious mental illness.

The department of human services shall develop a plan for an integrated, multidisciplinary continuum of services for ~~chronically mentally ill~~ individuals with serious mental illness. The continuum may consist of an array of services provided by private mental health professionals, private agencies, county social service agencies, human service centers, community-based residential care and treatment facilities, and private and public inpatient psychiatric hospitals. To the extent feasible, access to the continuum must be through human service centers. Within the limits of legislative appropriations, the plan for a continuum may include:

1. Programs, and appropriate related facilities, to provide socialization skills.
2. Programs, and appropriate related facilities, to provide basic living skills.
3. Appropriate residential facilities.
4. Appropriate training, placement, and support to enhance potential for employment.
5. Appropriate delivery and control of necessary medication.
6. Appropriate economic assistance.
7. An inpatient facility with appropriate programs to respond to persons who require hospitalization.

The continuum of care must provide that a person requiring treatment be submitted to the least restrictive available conditions necessary to achieve the purposes of treatment. The department shall ensure appropriate cooperation with county social service agencies and private providers in achieving the continuum of care.

SECTION 6. AMENDMENT. Section 50-31-07 of the North Dakota Century Code is amended and reenacted as follows:

50-31-07. State opioid treatment authority.

The ~~division of mental health and substance abuse services~~behavioral health division of the department is designated as the state opioid treatment authority.

Approved March 2, 2017

Filed March 3, 2017

¹⁵⁷ Section 50-06-06.5 was also amended by section 7 of Senate Bill No. 2039, chapter 353.

CHAPTER 333

HOUSE BILL NO. 1040

(Legislative Management)
(Human Services Committee)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to an evidence-based alcohol and drug education program; to amend and reenact subsection 3 of section 5-01-08 of the North Dakota Century Code, relating to a penalty for individuals under twenty-one years of age using alcoholic beverages or entering licensed premises; to provide for a report; and to provide an appropriation to the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

3. A violation of this section is a class B misdemeanor. For a violation of subsection 2, the court also shall sentence a violator to an evidence-based alcohol and drug education program operated under rules adopted by the department of human services under section 2 of this Act.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Alcohol and drug education program - Rules - Fees.

The department shall adopt rules for an evidence-based alcohol and drug education program for individuals under the age of twenty-one who violate section 5-01-08. The rules must allow for the program provider to charge a fee to a participant in the program.

SECTION 3. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES - PILOT PROJECT - CHILDREN'S PREVENTION AND EARLY INTERVENTION BEHAVIORAL HEALTH SERVICES - REPORT TO LEGISLATIVE MANAGEMENT.

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 department of human services for the purpose of establishing a children's prevention and early intervention behavioral health services pilot project in the school system of the department's choice, including services to children suffering from the effects of behavioral health issues, for the biennium beginning July 1, 2017, and ending June 30, 2019. Before September 1, 2018, the department of human services shall report to the legislative management regarding the status of the children's prevention and early intervention behavioral health services pilot project.

SECTION 4. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES - PEER-TO-PEER SUPPORT SERVICES - ALTERNATIVE USE.

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing funds to one or more organizations to provide peer-to-peer support services, for the biennium

beginning July 1, 2017, and ending June 30, 2019. Funds provided under this section must be used for providing recovery and peer support services to individuals with behavioral health needs. If the department of human services has other funds available to provide for peer-to-peer support services for the biennium beginning July 1, 2017, and ending June 30, 2019, the department may allocate funds appropriated under this section for providing children's prevention and early intervention behavioral health services as provided for under section 3 of this Act.

SECTION 5. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES - FAMILY-TO-FAMILY SUPPORT SERVICES. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing funds to one or more organizations to provide family-to-family support services, for the biennium beginning July 1, 2017, and ending June 30, 2019. Funds provided under this section must be used for providing support services to families with children who have disabilities or behavioral health needs.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 334

HOUSE BILL NO. 1226

(Representatives Hogan, P. Anderson, K. Koppelman, Mitskog, Olson, Schneider)
(Senators Grabinger, Nelson, Sorvaag)

AN ACT to provide for a study of establishment of a Medicaid fraud control unit and a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. MEDICAID FRAUD CONTROL UNIT STUDY - REPORT TO LEGISLATIVE MANAGEMENT. During the 2017-18 interim, the department of human services, with the cooperation of the governor and the attorney general, shall study the feasibility and desirability of establishing a Medicaid fraud control unit. Before August 1, 2018, the department of human services shall report to the legislative management the outcome of this study, together with any legislation required to implement the recommendations.

Approved March 16, 2017

Filed March 16, 2017

CHAPTER 335

HOUSE BILL NO. 1135

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact subsections 5 and 10 of section 39-01-15, section 50-06.1-16, subsection 1 of section 54-07-01.2, and section 54-44.3-20 of the North Dakota Century Code, relating to consolidating the committee on employment of people with disabilities into the state rehabilitation council and updating the categories of positions in the state service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁸ **SECTION 1. AMENDMENT.** Subsections 5 and 10 of section 39-01-15 of the North Dakota Century Code are amended and reenacted as follows:

5. Except as provided in this subsection, two dollars of each fee for issuance of a certificate and one dollar of each fee for issuance of an additional certificate under this section must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate. The rest of the fee, and the five dollar fee received for the issuance of an additional certificate under subsection 4, must be deposited in the state treasury and credited to the ~~employment of people with disabilities~~state rehabilitation council fund. The fees deposited in the fund are hereby appropriated on a continuing basis to the department of human services for use by the ~~committee on employment of people with disabilities~~state rehabilitation council to accomplish the ~~committee's~~council's statutory duties provided under section 50-06.1-16. If a certificate is lost, mutilated, or destroyed, the individual to whom the certificate was issued is entitled to a replacement. The individual shall furnish proof satisfactory to the director that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.
10. An individual may not stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility-impaired identification certificate issued by the director to a mobility-impaired individual. A mobility-impaired individual may not permit the use of a certificate issued under this section by an individual who is not mobility impaired when that use is not in connection with the transport of the mobility-impaired individual. The registered owner of a vehicle may not allow that vehicle to be used in a manner that violates this subsection. Proof of intent is not required to prove a registered owner's violation of this subsection. The registered owner, however, may be excused from a violation if the owner provides the citing authority with the name and address of the individual operating the vehicle at the time of the violation. A vehicle may temporarily use a space reserved for a mobility-impaired individual without a mobility-impaired certificate for the purpose of loading and unloading a mobility-impaired individual. A violation of this subsection is a nonmoving violation for which a fee of one hundred dollars must be imposed. Notwithstanding section

¹⁵⁸ Section 39-01-15 was also amended by section 1 of House Bill No. 1211, chapter 257.

29-27-02.1, fifty percent of the fee imposed and collected under this subsection is appropriated on a continuing basis to the local committee on persons with disabilities, if one exists in the city in which the violation occurred, state rehabilitation council for the development of job competitive and integrated employment opportunities for disabled individuals in the community.

SECTION 2. AMENDMENT. Section 50-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

50-06.1-16. Committee on employment of people with disabilities -- Appointment -- Expenses -- Director -- Duties -- Annual report State rehabilitation council.

1. There is established a committee on employment of people with disabilities state rehabilitation council in accordance with section 105 of the Rehabilitation Act of 1973 [29 U.S.C. 725].
 - a. The governor shall appoint four members of the public to serve as committee members with terms of three years, staggered so the terms of at least one but no more than two members expire July first of each year:
 - (1) The executive director of the North Dakota association of community providers or a designee of the director;
 - (2) One community employer representative;
 - (3) One individual with a disability; and
 - (4) One family member of an individual with a disability.
 - b. The following five individuals shall serve on the committee as ex officio members:
 - (1) The director of the department of commerce division of workforce development, or the director's designee;
 - (2) The director of the department of human services division of vocational rehabilitation, or the director's designee;
 - (3) The superintendent of public instruction's director of special education, or the director's designee;
 - (4) The director of the protection and advocacy project, or the director's designee; and
 - (5) The head of the department of human services developmental disabilities programs, as identified by the executive director of the department of human services.
 - c. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the unexpired term.
2. The public members of the committee are entitled to be paid for mileage and actual expenses incurred in attending meetings and in performance of their

~~official duties in amounts provided by law for other state officers and employees.~~

3. ~~The goal of the committee is to remove barriers in reaching and identify how to further the goal of public and private employers considering competitive and integrated employment as the first option when supporting individuals with disabilities who are of working age to obtain employment. As used in this section:~~
 - a. ~~"Competitive employment" means work in the competitive labor market which is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by an individual who does not have a disability.~~
 - b. ~~"Integrated setting" means with respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with individuals who do not have a disability, other than individuals who do not have a disability who are providing services to those applicants or eligible individuals, to the same extent that individuals without a disability in comparable positions interact with others.~~
4. ~~The committee~~state rehabilitation council:
 - a. ~~At the call of the chairman, shall meet at least quarterly~~Shall fulfill the duties outlined in section 105 of the Rehabilitation Act of 1973 [29 U.S.C. 725].
 - b. Shall collaborate, coordinate, and improve employment outcomes for working-age adults with disabilities, including:
 - (1) Reviewing and aligning policies, procedures, eligibility, and enrollment and planning for services for individuals, with the objective of increasing opportunities for community employment for North Dakotans with disabilities.
 - (2) Developing cross-agency tools to document eligibility, order of selection, assessment, and planning for services for individuals with disabilities.
 - (3) Identifying best practices, effective partnerships, sources of available federal funds, opportunities for shared services among existing providers, and means to expand model programs to increase community employment opportunities for individuals with disabilities.
 - (4) Identifying and addressing areas where sufficient support is not currently available or where additional options are needed to assist individuals with disabilities to work in competitive employment in integrated settings.
 - (5) Establishing interagency agreements to improve coordination of services and allow for data sharing as appropriate to assist individuals with disabilities.

(6) Setting benchmarks for improving community employment outcomes and services for individuals with disabilities.

~~e. Before January first of each year, shall issue an annual report. The committee shall submit the annual report to the governor and the legislative management. The report must detail the committee's activities, the committee's goals, and the progress the committee has made in reaching these goals. State agencies shall cooperate with the committee on the creation and dissemination of the annual report. The annual report must include identification of barriers to achieving the committee's goals and must include identified strategies and policies that can help the committee realize its goals.~~

5-3. The department of human services division of vocational rehabilitation shall provide the ~~committee~~state rehabilitation council with administrative services.

¹⁵⁹ **SECTION 3. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4.1-05-02, 4.1-26-02, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, ~~50-06-1-16,~~ 54-34.3-10, 54-54-02, 55-01-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:

- a. The aeronautics commission.
- b. The milk marketing board.
- c. The dairy promotion commission.
- d. The state banking board.
- e. The state credit union board.
- f. The advisory board of directors to the Bank of North Dakota.
- g. The pardon advisory board.
- h. The state parole board.
 - i. The state board of public school education.
 - j. The education standards and practices board.
 - k. The board of trustees of the teachers' fund for retirement.
 - l. The state game and fish advisory board.
- m. The health council.

¹⁵⁹ Section 54-07-01.2 was also amended by section 57 of Senate Bill No. 2327, chapter 199.

- n. The air pollution control advisory council.
- o. The board of animal health.
- p. The administrative committee on veterans' affairs.
- q. The committee on aging.
- ~~r. The committee on employment of people with disabilities.~~
- ~~s. The commission on the status of women.~~
- ~~t.s.~~ The North Dakota council on the arts.
- ~~u.t.~~ The state historical board.
- ~~v.u.~~ The state water commission.
- ~~w.v.~~ The state water pollution control board.

SECTION 4. AMENDMENT. Section 54-44.3-20 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-20. Categories of positions in the state service.

All positions in the state service are included in the classified service except:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant, and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law, other than the superintendent of North Dakota vision services - school for the blind, the superintendent of the school for the deaf, and the state librarian.
4. Officers and employees of the legislative branch of government.
5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the division and approved by the board.
8. Employees of the institutions of higher education under the control of the state board of higher education.
9. Members and employees of occupational and professional boards.

10. Officers and employees of the North Dakota mill and elevator association.
11. ~~The director of the committee on employment of people with disabilities of the department of human services.~~
- ~~12.~~ Positions referred to under law as serving at the pleasure of or at the will of the appointing authority.
- ~~13.~~12. Licensed teachers engaged in teaching at the North Dakota youth correctional center, North Dakota vision services - school for the blind, and the school for the deaf.
- ~~14.~~13. Officers of workforce safety and insurance.
- ~~15.~~14. Officers and employees of the department of commerce.
- ~~16.~~15. Attorneys employed by the insurance commissioner.
- ~~17.~~16. Engineers, engineering technicians, and geologists employed by the director of mineral resources.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 336

HOUSE BILL NO. 1119

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-06.2-10 and 50-24.7-02 of the North Dakota Century Code, relating to collection of overpayments for service payments for elderly and disabled program and expanded service payments for elderly and disabled program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

50-06.2-10. Service payments for elderly and disabled program eligibility.

1. The state agency may not require an individual to apply for services under chapter 50-24.1 as a condition of being eligible to apply for services under the service payments for elderly and disabled program:
 - a. If the individual's estimated monthly home and community-based services benefits, excluding the cost of case management, are between the income level established in section 50-24.1-02.6 and the lowest level of the fee schedule for services under this chapter; or
 - b. If the individual is receiving a service that is not available under chapter 50-24.1.
2. The home and community-based services case manager shall notify the state agency upon use of an exception authorized under subsection 1.
3. An overpayment, whether resulting from an eligible individual's or eligible individual's legal representative's concealment, misrepresentation, or fraud, or from assistance granted pending a decision on an appeal adverse to the appellant, and whenever made, is subject to recovery by the state agency. An overpayment may be collected from any person that benefited from, or that was responsible for, the overpayment. A statute of limitations or similar statute or the doctrine of laches does not bar a claim under this chapter.

SECTION 2. AMENDMENT. Section 50-24.7-02 of the North Dakota Century Code is amended and reenacted as follows:

50-24.7-02. Powers and duties of the department.

The department shall:

1. ~~Administer~~The department shall 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~~The department shall 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~~The department shall take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.
4. An overpayment, whether resulting from an eligible beneficiary's or eligible beneficiary's legal representative's concealment, misrepresentation, or fraud, or from assistance granted pending a decision on an appeal adverse to the appellant, and whenever made, is subject to recovery by the department. An overpayment may be collected from any person that benefited from, or that was responsible for, the overpayment. A statute of limitations or similar statute or the doctrine of laches does not bar a claim under this chapter.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 337

HOUSE BILL NO. 1085

(Representative D. Anderson)
(Senator Mathern)

AN ACT to create and enact a new section to chapter 50-06.4 of the North Dakota Century Code, relating to the creation of a brain injury advisory council; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

Brain injury advisory council.

1. The governor shall appoint at least five, but no more than nine, members to serve on the brain injury advisory council as follows:
 - a. One brain injury survivor, nominated by the council;
 - b. One family member of a brain injury survivor, nominated by the council;
 - c. At least one service provider who provides services to brain injury survivors, nominated by the council;
 - d. An individual representing the Indian affairs commission, nominated by the Indian affairs commission; and
 - e. At least one individual representing a religious, charitable, fraternal, civic, educational, legal, veteran, welfare, or professional group or organization.
2. The speaker of the house of representatives shall appoint one member of the house of representatives and the president pro tempore of the senate shall appoint one member of the senate to serve as members of the council. Each legislative member of the council is entitled to receive compensation from the legislative council for each day spent in meetings of the council and for reimbursement for related travel and other necessary expenses in the amounts provided by law for other state officers.
3. Each of the following entities shall appoint a representative to serve as a nonvoting member of the council who serves at the pleasure of the appointing entity:
 - a. Protection and advocacy project, one representative;
 - b. State department of health, one individual representing injury prevention and one representative representing emergency medical services and trauma;

- c. Department of human services, one individual representing behavioral health, one individual representing Medicaid, and one individual representing vocational rehabilitation; and
- d. Department of public instruction, one representative.
4. The governor may appoint an individual representing stroke health to serve as a nonvoting member of the council who serves at the pleasure of the governor.
5. A voting advisory council member appointed by the governor may not serve more than two consecutive four-year terms on the council.
6. A council member appointed under subdivision a or b of subsection 1 is entitled to receive from the department reimbursement for expenses as provided by law for state officers and per diem compensation as determined by the department if the member is attending meetings or performing duties directed by the council.
7. The council shall elect a chairman and vice chairman from the voting membership of the council and shall elect a secretary from the voting or nonvoting membership of the council. The council shall meet quarterly. A majority of the voting members of the council constitutes a quorum. The council shall adopt bylaws.
8. The council shall advise the department and shall participate in activities to improve the quality of life for an individual with brain injury and the individual's family through brain injury awareness, prevention, research, education, collaboration, support services, and advocacy.
9. The department shall provide the council with administrative support services.

SECTION 2. APPLICATION. The governor shall stagger the initial terms of the brain injury advisory council so approximately half of the initial appointments made by the governor serve two-year terms and the remainder of the initial appointments serve four-year terms. For the initial appointments to the advisory council, the department of human services shall submit nominees in place of the council.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 338

HOUSE BILL NO. 1315

(Representatives Kreidt, Devlin, Seibel, Weisz)
(Senator J. Lee)

AN ACT to amend and reenact section 50-24.4-17 of the North Dakota Century Code, relating to adjustments of nursing home rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-17 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-17. Adjustments and reconsideration procedures.

1. Rate adjustments may be made to correct errors subsequently determined and must also be retroactive to the beginning of the facility's rate year except with respect to rates paid by private-paying residents. Any adjustments that result in a cumulative change of more than ~~twenty-five cents~~ one dollar per day from the desk rate will be included in the next subsequent cost report to the extent not corrected by a rate adjustment made pursuant to this subsection.
2. Any requests for reconsideration of the rate must be filed with the department's medical services division for administrative consideration within thirty days of the date of the rate notification.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 339

HOUSE BILL NO. 1118

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 7 of section 50-24.5-01 of the North Dakota Century Code, relating to the definition of eligible beneficiary for the aid to aged, blind, and disabled persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 50-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

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. (1) Has applied for and is eligible to receive and receives benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and who has applied for and is receiving benefits, if the individual is eligible to receive benefits, under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.]; or
(2) Has applied for and is eligible to receive and receives benefits under section 50-24.1-37 for long-term services and supports pursuant to an asset test established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and section 50-24.1-02;
 - c. Meets the requirements of section 23-09.3-08.1;
 - d. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:
 - (1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, ~~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.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 340

HOUSE BILL NO. 1120

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 3 of section 50-24.6-04 of the North Dakota Century Code, relating to the prior authorization program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~a. Except for individuals twenty-one years of age and older, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, or brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, or generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, the department may not prior authorize the following medication classes:~~
 - a. (1) Antipsychotics;
 - b. (2) Antidepressants;
 - c. (3) Anticonvulsants;
 - d. (4) Antiretrovirals, for the treatment of human immunodeficiency virus;
 - e. (5) Antineoplastic agents, for the treatment of cancer; and
 - f. (6) Stimulant medication used for the treatment of attention deficit disorder and attention deficit hyperactivity disorder.
- b. For individuals under twenty-one years of age, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, or generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, the department may not prior authorize the following medication classes:
 - (1) Antipsychotics;
 - (2) Antidepressants;
 - (3) Anticonvulsants;
 - (4) Antiretrovirals, for the treatment of human immunodeficiency virus;
 - (5) Antineoplastic agents, for the treatment of cancer; and

- (6) Stimulant medication used for the treatment of attention deficit hyperactivity disorder.
- c. The restrictions of subdivision b do not apply for individuals under twenty-one years of age, who have five or more concurrent prescriptions for psychotropic medications.
- d. Prior authorization for individuals under twenty-one years of age is required for five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative, hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder. The department shall grant authorization to exceed the limits after a prescriber requesting authorization consults with a board certified pediatric psychiatrist approved by the department.

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 341

SENATE BILL NO. 2206

(Senators Bekkedahl, Burckhard, Cook)
(Representatives Dockter, Nathe, Weisz)

AN ACT to create and enact chapter 50-34 and a new section to chapter 57-20 of the North Dakota Century Code, relating to the transition of funding responsibility for county social services from the counties to the state and a credit against payments in lieu of taxes paid by centrally assessed companies; to amend and reenact sections 11-23-01, 50-01.2-03.2, 50-06-05.8, 50-06-20.1, and 50-06.2-04, subsection 3 of section 57-15-01.1, section 57-15-06.7, and subdivision c of subsection 1 of section 57-20-07.1 of the North Dakota Century Code, relating to county and multicounty social service board budgets, the human service grant program, county general fund levy limitations, and property tax statements; to suspend chapter 50-03 and sections 50-06-20.1 and 50-06.2-05 of the North Dakota Century Code, relating to county human services funds, the human services grant program, and county human services levy authority; to repeal section 57-20-07.2 of the North Dakota Century Code, relating to the state-paid property tax relief credit; to provide for a report to the legislative management; to provide for a legislative management study; to provide an appropriation; to provide for a transfer; to provide an exemption; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-23-01 of the North Dakota Century Code is amended and reenacted as follows:

11-23-01. Officers required to furnish commissioners with departmental budget.

1. Every officer in charge of any institution, office, or undertaking supported wholly or in part by the county shall file with the board of county commissioners a departmental budget that is prescribed by the state auditor. The departmental budget must include an itemized statement of the estimated amount of money that will be required for the maintenance, operation, or improvement of the institution, office, or undertaking for the ensuing year. The board of county commissioners may require additional information to clarify the departmental budget.

2. a. ~~The departmental budget submitted by the county social service board in 2015 for the 2016 budget may not exceed an amount determined using the departmental budget submitted in 2014 by the county social service board as a starting point, subtracting the reduction in the county's social service funding responsibility for 2014 derived from transferring the county social service costs identified in this subdivision from the county social service board to the department of human services, and applying to the resulting amount the percentage salary and benefits increase provided by legislative appropriations for state employees for taxable year 2015. For purposes of this subdivision, the reduction in the county's social service funding responsibility derived from transferring the county social service~~

costs identified in this subdivision from the county social service board to the department of human services includes the following:

- (1) Foster care and subsidized adoption costs that would have been paid by the county after December 31, 2015;
 - (2) The county's share of grant costs for medical assistance in the form of payments for care furnished to recipients of therapeutic foster care services which would have been paid by the county after December 31, 2015;
 - (3) The county's share of the costs for service payments to the elderly and disabled which would have been paid by the county after December 15, 2015;
 - (4) The county's share of salary and benefits for family preservation services pursuant to section 50-06-05.8 which would have been paid by the county after December 31, 2015;
 - (5) The county's share of the cost of the electronic benefits transfers for the supplemental nutrition assistance program which would have been paid by the county after December 31, 2015; and
 - (6) The computer processing costs which would have been paid by the county after December 31, 2015, which exceed the county's costs of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers (all items, United States city average) after January 1, 1996.
- b. The departmental budget submitted by the county social service board in 2016 for the 2017 budget may not exceed an amount determined using the 2015 departmental budget as a starting point and applying to that amount the percentage salary and benefits increase provided by legislative appropriations for state employees for 2016.
- c. The budget must include a statement identifying the total savings to the county as shown by a reduction in the amounts that otherwise would have been paid by the county to the department of human services for the costs identified in subdivision a. The department of human services shall determine the appropriate amount of what each county's costs would have been to help identify each county's total savings.
- The county share of the human service budget must be funded entirely from the county's property tax levy for that purpose and the county may not use funds from any other source to supplement the human services budget, with the exception that the county may make use of the identifiable amount of other sources the county has used to supplement its human services budget for 2015 and the county may use grant funds that may be available to the county under section 50-06-20.1.
- d. The department of human services shall develop a process to review a request from a county social service board for any proposed increase in staff needed as a result of significantly increased caseloads for state-funded human services programs, if the increase in staff would result

~~in the county exceeding the budget limitation established under this subsection. As part of its review process, the department shall review countywide caseload information and consider the option of multicounty sharing of staff. If the department approves a request for a proposed increase in staff, the county budget limitation established under subdivision b may be increased by the amount determined necessary by the department to fund the approved additional staff.~~

SECTION 2. AMENDMENT. Section 11-23-01 of the North Dakota Century Code is amended and reenacted as follows:

11-23-01. Officers required to furnish commissioners with departmental budget.

1. Every officer in charge of any institution, office, or undertaking supported wholly or in part by the county shall file with the board of county commissioners a departmental budget that is prescribed by the state auditor. The departmental budget must include an itemized statement of the estimated amount of money that will be required for the maintenance, operation, or improvement of the institution, office, or undertaking for the ensuing year. The board of county commissioners may require additional information to clarify the departmental budget.
2. a. The departmental budget submitted by the county social service board in ~~2015~~2019 for the ~~2016~~2020 budget may not exceed an amount determined using the departmental budget submitted in ~~2014~~2016 by the county social service board as a starting point, subtracting the reduction in the county's social service funding responsibility for ~~2014~~2016 derived from transferring the county social service costs identified in this subdivision from the county social service board to the department of human services, and applying to the resulting amount the percentage salary and benefits increase provided by legislative appropriations for state employees for taxable year ~~2015~~2019. For purposes of this subdivision, the reduction in the county's social service funding responsibility derived from transferring the county social service costs identified in this subdivision from the county social service board to the department of human services includes the following:
 - (1) Foster care and subsidized adoption costs that would have been paid by the county after December 31, 2015;
 - (2) The county's share of grant costs for medical assistance in the form of payments for care furnished to recipients of therapeutic foster care services which would have been paid by the county after December 31, 2015;
 - (3) The county's share of the costs for service payments to the elderly and disabled which would have been paid by the county after December 15, 2015;
 - (4) The county's share of salary and benefits for family preservation services pursuant to section 50-06-05.8 which would have been paid by the county after December 31, 2015;

- (5) The county's share of the cost of the electronic benefits transfers for the supplemental nutrition assistance program which would have been paid by the county after December 31, 2015; and
- (6) The computer processing costs which would have been paid by the county after December 31, 2015, which exceed the county's costs of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers (all items, United States city average) after January 1, 1996.
- b. ~~The departmental budget submitted by the county social service board in 2016 for the 2017 budget may not exceed an amount determined using the 2015 departmental budget as a starting point and applying to that amount the percentage salary and benefits increase provided by legislative appropriations for state employees for 2016.~~
- e. ~~The budget must include a statement identifying the total savings to the county as shown by a reduction in the amounts that otherwise would have been paid by the county to the department of human services for the costs identified in subdivision a. The department of human services shall determine the appropriate amount of what each county's costs would have been to help identify each county's total savings.~~

The county share of the human service budget must be funded entirely from the county's property tax levy for that purpose and the county may not use funds from any other source to supplement the human services budget, with the exception that the county may make use of the identifiable amount of other sources the county has used to supplement its human services budget for 2015 and the county may use grant funds that may be available to the county under section 50-06-20.1.

- d-c. The department of human services shall develop a process to review a request from a county social service board for any proposed increase in staff needed as a result of significantly increased caseloads for state-funded human services programs, if the increase in staff would result in the county exceeding the budget limitation established under this subsection. As part of its review process, the department shall review countywide caseload information and consider the option of multicounty sharing of staff. If the department approves a request for a proposed increase in staff, the county budget limitation established under subdivision b may be increased by the amount determined necessary by the department to fund the approved additional staff.

SECTION 3. 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.~~

4. Each county social service board shall administer, under the direction and supervision of the department:
- a-1. Locally administered economic assistance and social service programs;
- b-2. Replacement programs with substantially similar goals, benefits, or objectives; and

- e.3. When necessary, experimental, pilot, or transitional programs with substantially similar goals, benefits, or objectives.
2. ~~From the abstract of tax list prepared pursuant to section 57-20-04, each county shall annually provide the department of human services a report of the total mills levied for human service purposes pursuant to sections 50-03-01, 50-03-06, and 50-06.2-05, and the countywide value of a mill in each county. Upon receipt of reports from all counties, the department shall determine the statewide average of the mill levies and identify each county that levied ten mills more than that average. Each identified county is entitled to a share of funds appropriated for distribution under this subsection. Each identified county's share is determined by:~~
- a. ~~Reducing its mill levy necessary to meet the costs of providing human services required under this title by the statewide average mill levy determined under this subsection plus ten mills;~~
 - b. ~~Determining the amount that could have been raised in that county and year through a mill levy in the amount calculated under subdivision a;~~
 - c. ~~Totaling the amounts determined under subdivision b for all counties entitled to a distribution;~~
 - d. ~~Calculating a decimal fraction equal to each identified county's proportionate share of the total determined under subdivision c; and~~
 - e. ~~Multiplying that decimal fraction times one-half of the biennial appropriation.~~
3. ~~Notwithstanding any other provisions of law, the department shall reimburse county social service boards for expenses of locally administered economic assistance programs in counties in which the percentage of that county's average total supplemental nutrition assistance program caseload for the previous fiscal year which reside on federally recognized Indian reservation lands is ten percent or more. The reimbursement must be such that:~~
- a. ~~An affected county's actual direct costs and indirect costs allocated based on a percentage of each county's direct economic assistance and social services costs for locally administered economic assistance programs will be reimbursed at the percentage of that county's average total supplemental nutrition assistance program caseload for the previous state fiscal year which reside on federally recognized Indian reservation land not to exceed ninety percent;~~
 - b. ~~The affected counties will receive quarterly payments based on the actual county direct and indirect costs, as provided in subdivision a, for the previous state fiscal year;~~
 - e. ~~At the end of each fiscal year the actual quarterly payments paid must be reconciled to the current year of calculation of actual direct and indirect costs as provided in subdivision a and supplemental nutrition assistance program caseload and counties must be compensated accordingly in the first quarter of the new fiscal year; and~~

- d. The reimbursement will be calculated for each county and reported to the county social service board prior to September first.

SECTION 4. AMENDMENT. Section 50-06-05.8 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.8. Department to assume certain costs of certain economic assistance and social service programs.

~~Notwithstanding section 50-06.2-05, or any other provision in title 50 to the contrary, and in addition to the programs identified in section 50-06-20, the~~The department of human services shall pay the ~~local~~each service area's expenses of administration incurred by a county~~for administering economic assistance and social service programs for calendar years after December 31, 2015, for family preservation programs; a county's share of the cost of the electronic benefits transfers for the supplemental nutrition assistance program incurred after December 31, 2015; and the computer processing costs incurred by the county after December 31, 2015, which exceed the county's costs of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers (all items, United States city average) after January 1, 1996~~2017, based on the formula payment amount calculated for each service area under chapter 50-34.

SECTION 5. AMENDMENT. Section 50-06-05.8 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.8. Department to assume certain costs of certain social service programs.

Notwithstanding section 50-06.2-05, or any other provision in title 50 to the contrary, and in addition to the programs identified in section 50-06-20, the department of human services shall pay the local expenses of administration incurred by a county after December 31, ~~2015~~2019, for family preservation programs; a county's share of the cost of the electronic benefits transfers for the supplemental nutrition assistance program incurred after December 31, ~~2015~~2019; and the computer processing costs incurred by the county after December 31, ~~2015~~2019, which exceed the county's costs of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers (all items, United States city average) after January 1, 1996.

SECTION 6. AMENDMENT. Section 50-06-20.1 of the North Dakota Century Code is amended and reenacted as follows:

50-06-20.1. Human services grant program - Eligible counties - Reports.

1. ~~If the authority for counties to use emergency expenditures to address an emergency created by unusual and unanticipated demands on the counties' human services fund under chapter 50-03 is eliminated, the~~The department shall ~~establish~~administer a grant program to assist certain counties. An eligible county is one that historically has utilized the emergency expenditures process set forth in chapter 50-03 and which is adjacent to or part of an Indian reservation in this state, which contains Indian trust lands within the service area of a federally recognized Indian tribe which are occupied by enrolled members of that tribe, or which includes the state hospital created pursuant to subsection 8 of section 12 of article IX of the Constitution of North Dakota.

2. The grant program established in this section must be implemented through rulemaking under chapter 28-32. The department ~~may adopt emergency rules, without application of the grounds for emergency rulemaking otherwise required under section 28-32-03, to set out the policies and procedures for the disbursement of grants and~~ may not award more than one million nine hundred thousand dollars during the first year of a biennium, and no more than two million dollars during the second year of a biennium. The department shall notify a county of its approved funding no later than September first of each year of the biennium. The department shall issue an annual payment to counties receiving funds under this chapter in January of each year of the biennium.
3. The department shall report to the budget section annually and to the appropriations committees of the ~~sixty-fifth~~sixty-seventh legislative assembly and each succeeding legislative assembly on the funding approved under this section.

SECTION 7. AMENDMENT. Section 50-06.2-04 of the North Dakota Century Code is amended and reenacted as follows:

50-06.2-04. Powers and duties of county agencies.

Each county agency has the following powers and duties under this chapter:

1. To administer comprehensive human services programs for individuals and families at the county level in conformity with state and federal requirements under the direction and supervision of the state agency.
2. To publish and provide to the state agency a county human services plan which must include the following:
 - a. A statement of the goals of county human services programs in the county.
 - b. Methods used to identify persons in need of services and the social problems to be addressed by the county human services programs.
 - c. A description of each county human service proposed and identification of the agency or person proposed to provide the service.
 - d. The amount of money proposed to be allocated to each service.
 - e. An agreement to make available those human services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies under the provisions of this title.

The date of submission of the county human services plan to the state agency must be determined so that the plan is coordinated with the proposed and final comprehensive human services plan.

3. To make available the human services detailed in the comprehensive human services plan which the county agency has included in the approved county plan and to provide such other human services as the county agency determines essential in effectuating the purposes of this chapter within the county. To the extent funding is available under section 50-06.2-03 and chapter 50-24.1, the county plan must include the services enumerated in

those sections. The county agency shall make these services available to any individual requesting service and determined eligible on the basis of a functional assessment conducted in accordance with state and federal laws and regulations. The individual shall pay for the services in accordance with a fee scale based on family size and income. The county agency may contract with any qualified service provider in its provision of those enumerated services.

4. To submit annually to the board of county commissioners a budget containing an estimate and supporting data, setting forth the county funds needed to carry out the provisions of this chapter.

SECTION 8. Chapter 50-34 of the North Dakota Century Code is created and enacted as follows:

50-34-01. State-paid economic assistance and social service pilot program - Application - Report.

1. The department of human services shall administer a statewide pilot program for state funding of staffing and administrative costs related to the administration of economic assistance and social service programs.
2. Payments must be distributed to service areas pursuant to the formula in section 50-34-04 with the first formula payment distributions commencing in January 2018.
3. Services areas shall cooperate with the department of human services to adopt administrative and operational cost-savings methodologies and determine options for consolidations.
4. The director shall appoint a committee to study the operation of the pilot program and develop a plan for the permanent implementation of the formula established in section 50-34-04.
5. Before November 1, 2018, the department of human services shall report to the legislative management on the status of the pilot program and the development of a plan for permanent implementation of the formula established in section 50-34-04. The implementation plan must include recommendations for caseloads and outcomes for social services, designated child welfare services, and economic assistance; considerations regarding the delivery of county social services to ensure appropriate and adequate levels of service continue; options for efficiencies and aggregation; analysis of the potential reduction in social service offices, organizations, and staff due to consolidations; the feasibility and desirability of, and potential timeline for, transitioning county social service staff to the department of human services; and considerations for oversight and chain of command within social services and human services. The implementation plan must be submitted to the sixty-sixth legislative assembly as part of the department of human services budget request and identify the estimated biennial cost of the plan.

50-34-02. Definitions.

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

1. "Base year" means calendar year 2015.

2. "Case-month" means the provision of economic assistance or social services to one individual for the period of one month or the provision of energy assistance through the low income home energy assistance program for the period beginning October first of each year and ending May thirty-first of the following year.
3. "Director" means the executive director of the department of human services or the executive director's designee.
4. "Service area" means a county or consolidated group of counties administering economic assistance and social service programs within a designated area.

50-34-03. Formula payments to service areas - Distributions by the director.

1. The director shall calculate the total formula payment for each service area pursuant to section 50-34-04 for each calendar year based on each service area's most recently available case-month data. The director shall notify each service area of the amount of its formula payment for calendar year 2018 on or before August 15, 2017, and for calendar year 2019 on or before June 1, 2018.
2. The director shall distribute fifty percent of the amount of each service area's formula payment determined under subsection 1, within the limits of legislative appropriation, on or before January tenth.
3.
 - a. By June first of each year, the director shall recalculate the total formula payment for each service area pursuant to section 50-34-04 for the current calendar year based on each service area's most recently available case-month data.
 - b. If the recalculated formula payment results in an increase of five percent or less or a decrease of five percent or less as compared to the formula payment determined under subsection 1, the director shall distribute fifty percent of the amount of each service area's formula payment determined under subsection 1, within the limits of legislative appropriation, on or before June fifteenth.
 - c. If the recalculated formula payment results in an increase of more than five percent as compared to the formula payment determined under subsection 1, the director shall calculate the remainder of each service area's formula payment by subtracting one hundred five percent of the amount determined under subsection 1 from the amount determined under subdivision a and add the resulting amount to the amount distributed under subsection 2. The director shall distribute the remainder of each service area's formula payment as determined under this subdivision, within the limits of legislative appropriation, on or before June fifteenth.
 - d. If the recalculated formula payment results in a decrease of more than five percent as compared to the formula payment determined under subsection 1, the director shall calculate the remainder of each service area's formula payment by subtracting ninety-five percent of the amount determined under subsection 1 from the amount determined under subdivision a and add the resulting amount to the amount distributed under subsection 2. The director shall distribute the remainder of each

service area's formula payment as determined under this subdivision, within the limits of legislative appropriation, on or before June fifteenth.

4. For payments disbursed after calendar year 2018, the director shall subtract from a service area's June fifteenth disbursement any amount exceeding the limitation under section 50-34-05.

50-34-04. Baseline funding amounts - Calculation of formula payment.

1. The director shall calculate each service area's base year case-month totals and direct gross expenditures. A service area's direct gross expenditures include the actual amount expended within a service area in the base year for staffing and administrative costs related to the administration of economic assistance and social service programs as well as eligible federally allowable indirect costs. For purposes of this subsection, "eligible federally allowable indirect costs" means twenty-five percent of the average of the federally allowable indirect costs allocated to each service area in calendar years 2012, 2013, and 2014.
2. The director shall calculate each service area's base rate per economic assistance case-month by dividing the service area's economic assistance net expenditures by the economic assistance case-months reported for the service area in the base year. For purposes of this subsection, "economic assistance net expenditures" means the amount calculated by subtracting the amount paid to the service area in the base year for services reimbursed by medical assistance from the service area's economic assistance base year gross expenditures.
3. The director shall calculate each service area's base rate per social service case-month by dividing the service area's social service net expenditures by the social service case-months reported for the service area in the base year. For purposes of this subsection, "social service net expenditures" means the amount calculated by subtracting the amount paid to the service area in the base year for services reimbursed by medical assistance from the service area's social service base year gross expenditures.
4. The director shall calculate the total formula payment by summing the following:
 - a. The product of the service area's rate per economic assistance case-month and the service area's most recently available economic assistance caseload data.
 - b. The product of the service area's rate per social service case-month and the service area's most recently available social service caseload data.

50-34-05. Service area human services fund - Establishment - Fund balance limitations.

Each service area in this state shall maintain a fund to be known as the service area human services fund. All expenditures by the service area for the relief of the needy must be paid from the service area human services fund. If, due to unforeseen or other extenuating circumstances, a service area's formula distribution payment is not sufficient to meet the expenses of that service area, the board of county commissioners may approve a transfer from the county's general fund to the service area human services fund upon a majority vote of all members. The balance of

moneys in the fund on January first of each year may not exceed five hundred thousand dollars for a service area that had annual expenditures of two million dollars or greater in calendar year 2015 or one hundred thousand dollars for a service area that had annual expenditures of less than two million dollars in calendar year 2015.

50-34-06. Service area human services fund - Transfer.

If on January 1, 2018, the balance of a service area human services fund exceeds the limitations in section 50-34-05, the county treasurer shall transfer the amount exceeding the limitations in section 50-34-05 to the designated county general fund within that service area. A county receiving a transfer shall reduce its county general fund mill levy for taxable year 2018 by an equivalent amount. If the amount of a county's general fund mill levy is not sufficient to account for the entire required reduction, the county shall reduce an additional county-wide mill levy for taxable year 2018 to account for the remainder of the required reduction. If on January 1, 2019, the balance of a service area human services fund exceeds the limitations in section 50-34-05, the director shall reduce the service area's formula payment as directed in subsection 4 of section 50-34-03.

50-34-07. Authority to withhold funding.

Notwithstanding subsection 2 of section 50-01.2-06, if a service area fails to perform duties directed or assigned and supervised by the department of human services, the department of human services may withhold funding from the service area. The amount withheld may not exceed double the actual cost of the duty that was not performed, the per activity amount from the formula, the cost to the department of human services, or the amount of a federal penalty imposed as a result of the duty that was not performed.

50-34-08. Social services finance fund.

The social services finance fund is a special fund in the state treasury. Moneys in the fund may be used, subject to legislative appropriation, for the provision of formula payments to service areas pursuant to this chapter.

SECTION 9. AMENDMENT. Subsection 3 of section 57-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable property and property exempt by local discretion or charitable status which is not included in the taxing district for the budget year but was included in the taxing district for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable property or property exempt by local discretion or charitable status which was not included in the taxing district for the base year but which is included in the taxing district for the budget year.

- c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district. For purposes of this subdivision, an expired temporary mill levy increase does not include a school district general fund mill rate exceeding one hundred ten mills which has expired or has not received approval of electors for an extension under subsection 2 of section 57-64-03.
- d. ~~If the base year is a taxable year before 2013, reduced~~Reduced by the amount of state aid under chapter 15.1-27, which is determined by multiplying the budget year taxable valuation of the school district by the lesser of:
 - (1) ~~The~~ the base year mill rate of the school district minus sixty mills; or
 - (2) ~~Fifty~~ fifty mills, if the base year is a taxable year before 2013.
- e. ~~#Reduced by the base year human services county levy in dollars if the base year is a taxable year before 2016,2017 the base year human services county levy in dollars must be reduced to the amount of the county social service board budget levy for the budget year as determined under section 11-23-04.~~

SECTION 10. AMENDMENT. Subsection 3 of section 57-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

- 3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable property and property exempt by local discretion or charitable status which is not included in the taxing district for the budget year but was included in the taxing district for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable property or property exempt by local discretion or charitable status which was not included in the taxing district for the base year but which is included in the taxing district for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district. For purposes of this subdivision, an expired temporary mill levy increase does not include a school district general fund mill rate exceeding one hundred ten mills which has expired or has not received approval of electors for an extension under subsection 2 of section 57-64-03.
 - d. ~~If the base year is a taxable year before 2013, reduced~~Reduced by the amount of state aid under chapter 15.1-27, which is determined by multiplying the budget year taxable valuation of the school district by the lesser of:

- (1) ~~The~~the base year mill rate of the school district minus sixty mills; or
- (2) ~~Fifty~~fifty mills, if the base year is a taxable year before 2013.

- e. ~~If the base year is a taxable year before 2016, the base year human services county levy in dollars must be reduced to the amount of the county social service board budget levy for the budget year as determined under section 11-23-01~~increased by the highest amount received by the taxing district in a taxable year under chapter 50-34.

¹⁶⁰ **SECTION 11. AMENDMENT.** Section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

57-15-06.7. Additional levies - Exceptions to tax levy limitations in counties.

The tax levy limitations specified in section 57-15-06 do not apply to the following mill levies, which are expressed in mills per dollar of taxable valuation of property in the county:

1. A county supporting an airport or airport authority may levy a tax not exceeding four mills in accordance with section 2-06-15.
2. A county levying a tax for extension work as provided in section 4-08-15 may levy a tax not exceeding two mills and if a majority of the electors of the county have approved additional levy authority under section 4-08-15, the county may levy a voter-approved tax not exceeding an additional tax of two mills.
3. A county levying a tax for historical works in accordance with section 11-11-53 may levy a tax not exceeding one-quarter of one mill, except that if sixty percent of the qualified electors voting on the question of a levy limit increase as provided in section 11-11-53 shall approve, the tax levy limitation may be increased to not exceeding three-quarters of one mill.
4. A county levying a tax for a county or community hospital association as provided in section 23-18-01 may levy a tax for not more than five years not exceeding eight mills in any one year or, in the alternative, for not more than ten years at a mill rate not exceeding five mills.
5. A county levying a tax for county roads and bridges as provided in section 24-05-01 may levy a tax at a tax rate not exceeding ten mills. When authorized by a majority of the qualified electors voting upon the question at a primary or general election in the county, the county commissioners may levy and collect an additional tax for road and bridge purposes as provided in section 24-05-01, not exceeding a combined additional tax rate of twenty mills.
6. A county levying a tax to establish and maintain a public library service as provided in section 40-38-02 may levy a tax not exceeding four mills.
7. A county levying a tax for a county veterans' service officer's salary, traveling, and office expenses in accordance with section 57-15-06.4 may levy a tax not exceeding two mills.

¹⁶⁰ Section 57-15-06.7 was also amended by section 11 of Senate Bill No. 2026, chapter 61.

8. A county levying a tax for capital projects under section 57-15-06.6 may levy a tax not exceeding ten mills. When authorized by a majority of the qualified electors voting upon the question of a specific capital project or projects at a primary or general election in the county, the county commissioners may levy and collect an additional voter-approved tax for capital projects under section 57-15-06.6 not exceeding a tax rate of ten mills per dollar of the taxable valuation of property in the county. After January 1, 2015, approval or re-authorization by electors of increased levy authority under this subsection may not be effective for more than ten taxable years. Any voter-approved levy in excess of ten mills for the purposes specified in section 57-15-06.6 approved by the electors before January 1, 2015, remains effective through 2024 or the period of time for which it was approved by the electors, whichever is less, under the provisions of law in effect at the time it was approved.
9. A county levying a tax for emergency purposes as provided in section 57-15-28 may levy a tax not exceeding two mills in a county with a population of thirty thousand or more, four mills in a county with a population under thirty thousand but more than five thousand, or six mills in a county with a population of five thousand or fewer.
10. A county levying a tax for county emergency medical service according to section 57-15-50 may levy a tax not exceeding ten mills.
11. A county levying a tax for weed control as provided in section 4.1-47-14 may levy a tax not exceeding four mills.
12. A county levying a tax for programs and activities for senior citizens according to section 57-15-56 may levy a tax not exceeding two mills.
13. Tax levies made for paying the principal and interest on any obligations of the county evidenced by the issuance of bonds.
14. A county levying a tax for a job development authority as provided in section 11-11.1-04 may levy a tax not exceeding four mills on the taxable valuation of property within the county. However, if any city within the county is levying a tax for support of a job development authority and the total of the county and city levies exceeds four mills, the county tax levy within the city levying under subsection 12 of section 57-15-10 must be reduced so the total levy in the city does not exceed four mills.
15. ~~A county levying an annual tax for human services purposes as provided in section 50-06.2-05 may levy a tax not exceeding the lesser of twenty mills or the number of mills determined by dividing the county budget limitation in dollars as determined under section 11-23-01 by the taxable valuation of the county.~~
16. A levy for an extraordinary expenditure under section 11-11-24 approved by the electors of the county before January 1, 2015, may continue to be levied and collected under provisions of law in effect when the levy was approved and for the term it was approved by the electors. When the levy authority for an extraordinary expenditure ends under this subsection, the fund must be closed out and any unobligated balance in the fund must be transferred to the county general fund.

~~17-16.~~ Levies dedicated under section 57-15-59 before January 1, 2015, for lease payments may be continued to be levied and collected for the duration of the lease. When the levy authority for lease payments ends under this subsection, the fund must be closed out and any unobligated balance in the fund must be transferred to the county general fund. A lease for county facilities effective after December 31, 2014, is subject to the capital projects levy limitations of section 57-15-06.6.

Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

SECTION 12. AMENDMENT. Subdivision c of subsection 1 of section 57-20-07.1 of the North Dakota Century Code is amended and reenacted as follows:

c. Provide information identifying the property tax savings provided by the state of North Dakota. The tax statement must include a line item that is entitled "legislative tax relief" and identifies the dollar amount of property tax savings realized by the taxpayer under chapter 15.1-27 ~~and under section 57-20-07.2 for taxable years before 2017, and chapter 50-34 for taxable years after 2016.~~

(1) For purposes of this subdivision, legislative tax relief ~~under chapter 15.1-27~~ is determined by multiplying the taxable value for the taxable year for each parcel shown on the tax statement by the number of mills of mill levy reduction grant under chapter 57-64 for the 2012 taxable year plus the number of mills determined by subtracting from the 2012 taxable year mill rate of the school district in which the parcel is located the lesser of:

(1) (a) Fifty mills; or

(2) (b) The 2012 taxable year mill rate of the school district minus sixty mills.

(2) Legislative tax relief under chapter 50-34 is determined by multiplying the taxable value for the taxable year for each parcel shown on the tax statement by the number of mills determined by dividing the amount calculated in subsection 1 of section 50-34-03 by the taxable value of taxable property in the county for the taxable year.

SECTION 13. AMENDMENT. Subdivision c of subsection 1 of section 57-20-07.1 of the North Dakota Century Code is amended and reenacted as follows:

c. Provide information identifying the property tax savings provided by the state of North Dakota. The tax statement must include a line item that is entitled "legislative tax relief" and identifies the dollar amount of property tax savings realized by the taxpayer under chapter 50-34 for taxable years 2017 and 2018 and under chapter 15.1-27 ~~and under section 57-20-07.2.~~ For purposes of this subdivision, legislative tax relief ~~under chapter 15.1-27~~ is determined by multiplying the taxable value for the taxable year for each parcel shown on the tax statement by the number of mills of mill levy reduction grant under chapter 57-64 for the 2012 taxable year plus the number of mills determined by subtracting from the 2012 taxable year mill rate of the school district in which the parcel is located the lesser of:

(1) Fifty mills; or

(2) The 2012 taxable year mill rate of the school district minus sixty mills.

SECTION 14. A new section to chapter 57-20 of the North Dakota Century Code is created and enacted as follows:

Centrally assessed company credit against payments in lieu of taxes.

1. The owner, operator, or lessee of transmission lines, for which payments in lieu of property taxes are assessed by the state board of equalization under section 57-06-17.3, is entitled to a credit against tax in the amount provided in subsection 3. The credit for each transmission company must be allocated to the counties in the same manner as the tax collected from that company is allocated.
2. The owner, operator, or lessee of electric transmission or distribution property, for which payments in lieu of property taxes are assessed by the state board of equalization under sections 57-33.2-02 or 57-33.2-03, is entitled to a credit against the transmission or distribution tax in the amount provided in subsection 3. The credit for each transmission or distribution company must be allocated and distributed to counties in the same manner as the tax collected from that company is allocated.
3. The amount of credit is determined by multiplying the company's assessed tax by a fraction, the numerator of which is the total of all formula payments calculated for the subsequent calendar year under section 50-34-03 and the denominator of which is the total statewide ad valorem property tax levied in the prior taxable year.
4. The tax commissioner shall annually calculate the amount of credit to which a company is entitled under this section.

SECTION 15. SUSPENSION. Chapter 50-03 and section 50-06-20.1 of the North Dakota Century Code are suspended.

SECTION 16. SUSPENSION. Section 50-06.2-05 of the North Dakota Century Code is suspended.

SECTION 17. REPEAL. Section 57-20-07.2 of the North Dakota Century Code is repealed.

SECTION 18. LEGISLATIVE MANAGEMENT STUDY - PROPERTY TAX SYSTEM. During the 2017-18 interim, the legislative management shall consider studying the property tax system, with emphasis on the feasibility and desirability of providing property tax reform and relief. The study must include consideration of all property classifications and taxing districts and evaluate historical fluctuations in property values, the transparency of the property tax system, the processes and procedures available to taxpayers to contest valuations and assessments, the manner in which property tax information is provided to taxpayers, the process of determining taxing district budgets, and taxpayer participation and input in the property tax system. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 19. FUNDING FOR STATE-PAID ECONOMIC ASSISTANCE AND SOCIAL SERVICES PILOT PROGRAM - APPROPRIATION - DEPARTMENT OF HUMAN SERVICES. A total of \$160,700,000 is available to the department of human services for the state-paid economic assistance and social services pilot program for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

1. There is appropriated out of any moneys in the social services finance fund in the state treasury, not otherwise appropriated, the sum of \$134,700,000, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying the expenses of the state-paid economic assistance and social services pilot program for the biennium beginning July 1, 2017, and ending June 30, 2019.
2. The department of human services shall also use \$26,000,000 from the department of human services' general fund appropriation in House Bill No. 1012, as approved by the sixty-fifth legislative assembly, for the purpose of defraying the expenses of the state-paid economic assistance and social services pilot program for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 20. TRANSFER - TAX RELIEF FUND TO SOCIAL SERVICES FINANCE FUND. The office of management and budget shall transfer the sum of \$134,700,000 from the tax relief fund to the social services finance fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 21. EXEMPTION - BUDGET ALLOTMENTS. The sum of \$26,000,000 appropriated from the general fund to the department of human services for the state-paid economic assistance and social services pilot program in House Bill No. 1012, as approved by the sixty-fifth legislative assembly, is not subject to the provisions of section 54-44.1-12, and the director of the office of management and budget may not include this amount in calculations used to determine transfers from the budget stabilization fund under section 54-27.2-03 for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 22. EFFECTIVE DATE - EXPIRATION DATE. Sections 9, 11, 12, and 16 of this Act are effective for the first two taxable years beginning after December 31, 2016, and are thereafter ineffective. Sections 14 and 17 of this Act are effective for taxable years beginning after December 31, 2016. Sections 1, 3, 8, and 15 of this Act are effective August 1, 2017, through July 31, 2019, and are thereafter ineffective. Sections 4 and 7 of this Act are effective August 1, 2017, through December 31, 2019, and are thereafter ineffective. Sections 10 and 13 of this Act are effective for taxable years beginning after December 31, 2018. Sections 2 and 6 of this Act become effective on August 1, 2019. Section 5 of this Act becomes effective on January 1, 2020.

Approved April 26, 2017

Filed April 26, 2017

CHAPTER 342

SENATE BILL NO. 2163

(Senators J. Lee, Dever, Heckaman)
(Representatives K. Koppelman, Delmore, Hogan)

AN ACT to create and enact a new section to chapter 50-25.2 of the North Dakota Century Code, relating to the financial exploitation of vulnerable adults; to amend and reenact subsection 7 of section 50-25.2-01 of the North Dakota Century Code, relating to the definition of financial exploitation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 50-25.2-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Financial exploitation" means use or receipt of services provided by the vulnerable adult without just compensation, the taking, acceptance, misappropriation, or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.

SECTION 2. A new section to chapter 50-25.2 of the North Dakota Century Code is created and enacted as follows:

Civil remedy for financial exploitation - Damages - Commencement of action.

1. A vulnerable adult who has been financially exploited has a cause of action against any perpetrator and may recover damages for that exploitation. The action may be brought in a court of competent jurisdiction by:
 - a. The vulnerable adult;
 - b. The vulnerable adult's guardian or conservator;
 - c. Any person acting on behalf of the vulnerable adult with the consent of the vulnerable adult; or
 - d. The personal representative of the estate of a deceased victim.
2. An action for financial exploitation of a vulnerable adult must be proven by clear and convincing evidence. If financial exploitation is proven, the court shall award to the plaintiff actual damages, reasonable attorney's fees and costs, and reasonable fees for the services of a guardian ad litem if appointed by the court.
3. If the financial exploitation of the vulnerable adult by the perpetrator involved oppression, fraud, deception, or actual malice, the court may award exemplary damages in accordance with section 32-03.2-11.

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4. An action for damages for financial exploitation of a vulnerable adult must be commenced within six years after the plaintiff discovers or, through exercise of reasonable diligence, should have discovered the facts constituting the financial exploitation.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 343

SENATE BILL NO. 2251

(Senators Poolman, Armstrong, Myrdal)
(Representatives Roers Jones, Rohr)

AN ACT to create and enact two new sections to chapter 50-25.1 of the North Dakota Century Code, relating to substance exposed newborns; and to amend and reenact sections 50-25.1-02, 50-25.1-05, 50-25.1-06.1, and 50-25.1-09 of the North Dakota Century Code, relating to substance exposed newborns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "A person responsible for the child's welfare" means ~~a person~~ an individual who has responsibility for the care or supervision of a child and who is the child's parent, an adult family member of the child, any member of the child's household, the child's guardian, or the child's foster parent; or an employee of, or any person providing care for the child in, a public or private school or child care setting.
2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol abuse or dependence as defined in the current edition of the "Diagnostic and Statistical Manual of Mental Disorders" published by the American psychiatric association or a maladaptive use of alcohol with negative medical, sociological, occupational, or familial effects.
3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2.
4. "Alternative response assessment" means a child protection response involving substance exposed newborns which is designed to:
 - a. Provide referral services to and monitor support services for a person responsible for the child's welfare and the substance exposed newborn;
and
 - b. Develop a plan of safe care for the substance exposed newborn.

5. "Assessment" means a factfinding process designed to provide information that enables a determination to be made that services are required to provide for the protection and treatment of an abused or neglected child.
- 5-6. "Authorized agent" means the county social service board, unless another entity is designated by the department.
- 6-7. "Children's advocacy center" means a full or associate member of the national children's alliance which assists in the coordination of the investigation in response to allegations of child abuse by providing a dedicated child-friendly location at which to conduct forensic interviews, forensic medical examinations, and other appropriate services and which promotes a comprehensive multidisciplinary team response to allegations of child abuse. The team response may include forensic interviews, forensic medical examinations, mental health and related support services, advocacy, and case review.
- 7-8. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
- 8-9. "Department" means the department of human services or its designee.
- 9-10. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect when the institution responsible for the child's welfare is a residential child care facility, a treatment or care center for individuals with intellectual disabilities, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.
- 10-11. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.
- 11-12. "Near death" means an act which, as certified by a physician, places a child in serious or critical condition.
- 12-13. "Neglected child" means a deprived child as defined in chapter 27-20.
- 13-14. "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery of the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.

- 44-15. "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
- 45-16. "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible, of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.
17. "Substance exposed newborn" means an infant younger than twenty-eight days of age at the time of the initial report of child abuse or neglect and who is identified as being affected by substance abuse or withdrawal symptoms or by a fetal alcohol spectrum disorder.

¹⁶¹ **SECTION 2. AMENDMENT.** Section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05. Assessment - Alternative response assessment.

1. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment; or alternative response assessment or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment or alternative response assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.
2. According to guidelines developed by the department, the department may initiate an alternative response assessment if the department determines initiation is appropriate.
3. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may:
 - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services.
 - b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who

¹⁶¹ Section 50-25.1-05 was also amended by section 2 of Senate Bill No. 2116, chapter 345.

currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator.

- c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.

~~3-4.~~ Except as prohibited under title 42, Code of Federal Regulations, part 2, a regional human service center shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to an assessment of reported child abuse or neglect.

~~4-5.~~ The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section shall be audio-recorded or video-recorded.

SECTION 3. AMENDMENT. Section 50-25.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-06.1. Caseload standards - Reimbursement.

The department shall adopt caseload standards establishing minimum staff-to-client ratios for the assessment and alternative response assessment of reports of child abuse or neglect and the provision of protective services. Within the limits of legislative appropriation, the department shall reimburse its authorized agent, upon claim being made by the authorized agent, for seventy-five percent of additional staff costs caused by the imposition of such caseload standards. Upon a determination that legislative appropriations are insufficient to reimburse each claiming authorized agent in the amount of seventy-five percent of such additional staff costs, the department shall reimburse each claiming authorized agent for that percentage of additional staff costs which the appropriation is sufficient to defray.

SECTION 4. AMENDMENT. Section 50-25.1-09 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-09. Immunity from liability.

Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation ~~or assisting in an assessment, assisting in an alternative response assessment,~~ furnishing information, or in providing protective services under this chapter or who is a member of the child fatality review panel, is immune from any liability, civil or criminal, except for criminal liability as provided by section 50-25.1-13, that otherwise might result from reporting the alleged case of abuse, neglect, or death resulting from child abuse or neglect. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse, neglect, or death resulting from abuse or neglect must be presumed.

SECTION 5. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Alternative response assessment - Compliance.

If an alternative response assessment is initiated as a result of a report of child abuse or neglect, a decision that services are required may not be made if the person responsible for the child's welfare complies with the resulting referred services and plan of safe care for the substance exposed newborn. The department shall

determine whether a person responsible for the child's welfare has complied with the referred services and plan of safe care for the substance exposed newborn. If the department determines a person responsible for the child's welfare has not complied with the referred services and plan of safe care for the substance exposed newborn, an assessment of the initial report of child abuse or neglect may be completed.

SECTION 6. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Alternative response assessment - Services.

1. In response to an alternative response assessment, the department:
 - a. Shall provide referral services to, and monitor support services for, the person responsible for the child's welfare, the substance exposed newborn, and other children under the same care as may be necessary for their well-being;
 - b. Shall develop a plan of safe care for the substance exposed newborn; and
 - c. May take any appropriate action under chapter 25-03.1.
2. The department may discharge the powers and duties provided under this section through an authorized agent.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 344

SENATE BILL NO. 2189

(Senators J. Lee, D. Larson, Meyer)
(Representatives Karls, Delmore, Holman)

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to the confidentiality of children's advocacy center records; and to amend and reenact subsection 3 of section 12.1-34-07 and subsection 1 of section 27-20-51 of the North Dakota Century Code, relating to reimbursement of the cost of forensic interviews and confidentiality of juvenile court records and children's advocacy center records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-34-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Upon submission of appropriate documentation, the attorney general, within the limits of legislative appropriations, shall reimburse the health care facility or a health care professional for the reasonable costs incurred in performing the medical screening and acute forensic medical examination. Beginning on April first of the final year of each biennium, the attorney general, subject to legislative appropriations, shall reimburse each accredited children's advocacy center located in the state for a forensic interview that is not reimbursable by insurance, Medicaid, or crime victims compensation.

¹⁶² **SECTION 2. AMENDMENT.** Subsection 1 of section 27-20-51 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in this section, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are closed to the public. Juvenile court files and records are open to inspection only by:
 - a. The judge and staff of the juvenile court.
 - b. The parties to the proceeding or their counsel or the guardian ad litem of any party.
 - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
 - d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who, prior to the criminal case, had been a party to the proceeding in juvenile court.

¹⁶² Section 27-20-51 was also amended by section 1 of Senate Bill No. 2098, chapter 225.

- e. The professional staff of the uniform crime victims compensation program when necessary for the discharge of their duties pursuant to chapter 54-23.4.
- f. A staff member of the division of children and family services of the department of human services or a law enforcement officer when necessary for the performance of that person's duties under section 50-11.1-06.2 or the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119 et seq.].
- g. An employee or agent of the department of human services when necessary for performance of that individual's duty under chapter 50-11 or 50-11.1 to investigate the background of an individual living or working in the facility, home, or residence for which licensure is sought.
- h. A criminal justice agency if the juvenile is required to register under section 12.1-32-15.
- i. The staff of a children's advocacy center if the juvenile or a victim of the juvenile has been referred for or has received services at the children's advocacy center.

SECTION 3. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of children's advocacy center records.

Records and digital media in the possession of a children's advocacy center relating to a forensic medical examination, forensic interview, or therapy are confidential and may be released only to a person other than a law enforcement agency, the department or the department's authorized agent, or a medical or mental health professional when the child comes before the medical or mental health professional in that person's professional capacity, upon service of a subpoena signed by a judge.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 345

SENATE BILL NO. 2116

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-25.1-03.1 and subsection 3 of section 50-25.1-05 of the North Dakota Century Code, relating to the disclosure of patient records relevant to an assessment of reported child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-03.1. Photographs - X-rays - Medical tests.

Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who the person or official has knowledge or reasonable cause to suspect is an abused or neglected child and, if indicated by medical consultation, cause to be performed imaging studies, laboratory tests, colposcopies, and other medical tests of the child without the consent of the child's parents or guardian. All photographs and other visual images taken pursuant to this section must be taken by law enforcement officials, physicians, or medical facility professionals upon the request of any person or official required to report under this chapter. Photographs and visual images, or copies of them, must be sent to the department or the department's designee at the time the initial report of child abuse or neglect is made or as soon thereafter as possible. ~~Imaging studies or copies of the studies and copies of results of other tests conducted under this section must be provided to the department or the department's designee upon request.~~

¹⁶³ **SECTION 2. AMENDMENT.** Subsection 3 of section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as prohibited under title 42, Code of Federal Regulations, part 2, a ~~regional human service center~~medical, dental, or mental health professional, hospital, medical or mental health facility, or health care clinic shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to an assessment of reported child abuse or neglect ~~or to a services required decision. The department, or the department's authorized agent, shall limit the request for records to the minimum amount of records necessary to enable a determination to be made or to support a determination of whether services are required to provide for the protection and treatment of an abused or neglected child.~~

Approved April 17, 2017

Filed April 17, 2017

¹⁶³ Section 50-25.1-05 was also amended by section 2 of Senate Bill No. 2251, chapter 343.

CHAPTER 346

SENATE BILL NO. 2117

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to criminal history record checks for Medicaid services applicants, providers, and staff members; to amend and reenact section 50-06-01.9 of the North Dakota Century Code, relating to criminal history record checks for job applicants, department staff, county employees, contractors, and Medicaid services applicants, providers, and staff members; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁴ **SECTION 1. AMENDMENT.** Section 50-06-01.9 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.9. Criminal history record checks.

~~In accordance with section 12-60-24, the~~ department may require criminal history record checks as the department determines appropriate for:

1. ~~Employees~~ Job applicants of the department and employees of the department upon hiring;
2. Job applicants of the county social service agencies and the department's and county social service agencies' contractors and contractors' subcontractors that may have access to federal tax information received from the United States internal revenue service through a computer match and stored in the department's eligibility system;
3. A criminal history record check conducted under subsections 1 and 2 is valid for ten years, after which the department shall require another criminal history record check on employees of the department, county social service agencies, and the department's and county social service agencies' contractors and contractors' subcontractors that may have access to federal tax information received from the United States internal revenue service through a computer match and stored in the department's eligibility system;
4. ~~Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and~~
- 3-5. Applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history record checks for new staff members of those applicants, providers of an applicant, and a provider if the provider is providing early childhood services within the provider's home; and

¹⁶⁴ Section 50-06-01.9 was also amended by section 1 of Senate Bill No. 2090, chapter 348.

6. Medicaid services applicant providers, Medicaid services providers, staff members of the applicant provider or provider, or an individual with a five percent or more direct or indirect ownership interest in the applicant provider or provider under chapter 50-24.1.

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Criminal background investigation - Fingerprinting required.

1. When the department determines a criminal history record check is appropriate, a provider applicant, a provider, staff members of the applicant provider or provider, or an individual with a five percent or more direct or indirect ownership interest in the provider applicant or provider shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law.
2. The applicant provider or provider shall assure the information obtained under subsection 1 is provided to the department within thirty days of the notice date.
3. The department shall submit the information and fingerprints to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant provider, provider, staff members of the applicant provider or provider, or an individual with a five percent or more direct or indirect ownership interest in the provider applicant or provider in accordance with section 12-60-24.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of response, provide the response of the federal bureau of investigation to the department. The bureau also shall provide any criminal history record information that lawfully may be made available under chapter 12-60 to the department.
5. The results of the investigations must be forwarded to the department.
6. Upon request by the applicant provider, provider, staff members of the applicant provider or provider, or an individual with a five percent or more direct or indirect ownership interest in the provider applicant or provider, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
7. The applicant provider, provider, staff members of the applicant provider or provider, or an individual with a five percent or more direct or indirect ownership interest in the provider applicant or provider shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.
8. The department may charge a fee not to exceed the actual cost for the purpose of processing the background investigations.
9. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the cost of the fingerprinting.

10. The department may use the background information findings to determine approval of Medicaid services provider application or termination of enrollment as a Medicaid services provider. An individual denied or terminated as a Medicaid service provider as a result of the background investigation may not be qualified to enroll as a provider, have five percent or greater ownership or control interest in a Medicaid services provider, or submit claims for reimbursement through the department's Medicaid management information system.

SECTION 3. EFFECTIVE DATE. This Act becomes effective July 1, 2017.

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

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 347

SENATE BILL NO. 2060

(Senators Poolman, Casper, Unruh)
(Representatives Streyle, Porter, Pyle)

AN ACT to amend and reenact subsection 2 of section 50-11.1-07.8 and subsection 2 of section 50-25.1-11 of the North Dakota Century Code, relating to parental notification of early childhood services investigations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-11.1-07.8 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department:
 - a. Shall notify the parent of any child receiving early childhood services when that program's license, self-declaration, or registration document is suspended.
 - b. ~~May~~**Shall** 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~~**Shall** 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.

SECTION 2. AMENDMENT. Subsection 2 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The department shall notify the~~ parent or legally appointed guardian of a child receiving early childhood services under chapter 50-11.1 ~~may receive~~**of** the name of the subject; ~~and provide~~ a summary of the facts; and the results of an assessment conducted under this chapter if the report made under this chapter involves the owner, operator, 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 March 30, 2017

Filed March 30, 2017

CHAPTER 348

SENATE BILL NO. 2090

(Senator Bekkedahl)
(Representatives Damschen, Hogan)

AN ACT create and enact a new subsection to section 50-11.1-06.2 of the North Dakota Century Code, relating to criminal history record checks; to amend and reenact section 50-06-01.9, subsection 25 of section 50-11.1-02, sections 50-11.1-03, 50-11.1-04, and 50-11.1-06, subsection 1 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, and sections 50-11.1-12, 50-11.1-16, and 50-11.1-17 of the North Dakota Century Code, relating to early childhood services criminal record checks, licensing, definitions, registration, applications, and fees; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁵ **SECTION 1. AMENDMENT.** Section 50-06-01.9 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.9. Criminal history record checks.

The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;
2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and
3. Applicants Providers holding, applicants for, and emergency designees and staff members of providers holding and applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and/or in-home providers provider registration under chapter 50-11.1. The department also may require criminal history record checks for new staff household members of those applicants, providers of an applicant, and a provider if the provider is providing a residence out of which early childhood services within the provider's home are provided.

SECTION 2. AMENDMENT. Subsection 25 of section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

25. "Staff member" means ~~operator, caregiver, provider, or any other individual, whether paid or volunteer, who provides care, supervision, or guidance to children in an individual:~~
 - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration and includes food preparation, transportation, and maintenance personnel; or

¹⁶⁵ Section 50-06-01.9 was also amended by section 1 of Senate Bill No. 2117, chapter 346.

- b. Whose activities involve the care, supervision, or guidance of children for or unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

SECTION 3. AMENDMENT. Section 50-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-03. Operation of early childhood services program - License required - Fees.

1. A license for family child care is required if early childhood services are provided for four or more children ages twenty-four months and under, or six or seven children through age eleven at any one time which includes no more than three children under twenty-four months of age.
2. A license for group child care is required if early childhood services are provided for at least eight and no more than thirty children at any one time.
3. A license for a child care center is required if early childhood services are provided for more than thirty children at any one time.
4. ~~A~~Except as provided under subsection 5, a person, ~~partnership, firm, corporation, limited liability company, association, or nongovernmental organization~~ may not establish or operate a family child care, group child care, preschool, school-age child care, or child care center unless licensed to do so by the department.
5. A governmental organization may not establish or operate a family child care, group child care, preschool, school-age child care, or child care center without first receiving public approval by certifying, to the department or the department's authorized agent, that it has complied with all rules applicable to family child care, group child care, preschool, or school-age child care, or to child care centers.
6. A license is not required for onsite child care services that are located in the actual building in which the child's parent is employed, not to exceed ten children per location.
7. An applicant for a license shall submit the following nonrefundable fees with the application:
 - a. The operator of a family child care applying for a license shall pay an annual license fee of twenty dollars or if the license is issued for a two-year period, a fee of thirty-five dollars.
 - b. The operator of a group child care applying for a license shall pay an annual license fee of twenty-five dollars or if the license is issued for a two-year period, a fee of forty-five dollars.
 - c. The operator of a preschool applying for a license shall pay an annual license fee of thirty dollars or if the license is issued for a two-year period, a fee of fifty-five dollars.

- d. The operator of a child care center applying for a license shall pay an annual license fee of forty dollars or if the license is issued for a two-year period, a fee of seventy-five dollars.
- e. The operator of a multiple licensed program applying for a license shall pay an annual license fee of fifty dollars or if the license is issued for a two-year period, a fee of ninety-five dollars.
8. An applicant for a license who currently holds a license or self-declaration shall submit the nonrefundable fees set forth in subsection 7 with the application at least sixty days and no more than ninety days before the expiration date of the applicant's current license or self-declaration. If the nonrefundable fees and application are submitted less than sixty days before the expiration date of the applicant's current license or self-declaration, the applicant shall submit with the application two times the nonrefundable fees set forth in subsection 7.
9. In addition to any criminal sanctions or other civil penalties ~~which that~~ may be imposed pursuant to law, the operator of an early childhood program who, after being given written notice by the department or the department's authorized agent, continues to provide early childhood services without a license as required by this section is subject to a civil penalty of fifty dollars per day for each day of operation without the required license. The civil penalty may be imposed by the courts or by the department through an administrative hearing pursuant to chapter 28-32.
- ~~9-10.~~ All fees collected under ~~subsection 6~~subsections 7 and 8 must be paid to the department or the department's authorized agent and must be used to defray the cost, to the department or the department's authorized agent, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

SECTION 4. AMENDMENT. Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term.

1. An application for operation of an early childhood program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood program within thirty days of receipt of a completed application and all supporting documents by the department and upon a showing that:

- a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and ~~must~~ beare maintained according to rules adopted by the department;
 - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules of the department;
 - c. The application ~~does~~ and supporting documents do not include any fraudulent or untrue representations;
 - d. The owner ~~or~~ operator, or applicant has not had a previous license or self-declaration denied or revoked within the twelve months ~~prior to~~ before the date of the current application;
 - e. The owner ~~or~~ operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial ~~cannot~~ may not have occurred within the five years immediately preceding the application date;
 - f. The program has paid its license fees and any penalties and sanctions assessed against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
 - g. The family child care owner or operator ~~has~~ and staff members have received training and isare currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and isare currently certified in first aid by a program approved by the department; and
 - h. The group child care, preschool, school-age child care, or child care center ~~maintains~~, at all times during which early childhood services are provided, ~~at least one person who has~~ staff members have received training and isare currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and ~~at least one person who is~~ currently certified in first aid by a program approved by the department.
2. The license issued to the owner or operator of an early childhood ~~services~~ program may not be effective for longer than two years.
 3. The department may consider the applicant's ~~prior~~ past licensing, self-declaration, and registration history in determining whether to issue a license.
 4. The department may issue a provisional or restricted license in accordance with the rules of the department.

5. The department shall notify the owner or operator that the owner or operator is required to post a notice of late application at the early childhood program premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of the early childhood program's license.

SECTION 5. AMENDMENT. Section 50-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06. In-home provider - Registration voluntary - Prerequisites for approval - Issuance of registration document - Term.

An in-home provider may apply for a registration document from the department. The department or the department's authorized agent shall determine whether the applicant meets the standards and shall issue or deny a registration document based upon that determination. A registration document for an in-home provider may not be effective for longer than one year. The application ~~does and supporting documents~~ may not include any fraudulent or untrue representations. The department may consider the early childhood services history of the applicant in determining issuance of a registration document. The department may investigate an applicant according to rules adopted by the department to determine whether the applicant has a criminal record or has been the subject of a finding of services required for child abuse and neglect. The department may issue a provisional in-home provider registration document in accordance with the rules of the department.

¹⁶⁶ **SECTION 6. AMENDMENT.** Subsection 1 of section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon a determination by the department ~~that a criminal history record check is appropriate, at the following individuals are to obtain two sets of the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints:~~
 - a. ~~A provider holding or an applicant for early childhood services licensure, self-declaration, or in-home provider, as well as new staff members of early childhood services programs and new household registration;~~
 - b. Emergency designees and staff members of providers holding and applicants for early childhood services licensure, self-declaration, or in-home provider registration; and
 - c. Household members of a residence out of which early childhood services are provided, shall obtain two sets of the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints.

¹⁶⁷ **SECTION 7.** A new subsection to section 50-11.1-06.2 of the North Dakota Century Code is created and enacted as follows:

A criminal history record check conducted under this section and subsection 3 of section 50-06-01.9 is valid for five years, after which the department shall

¹⁶⁶ Section 50-11.1-06.2 was also amended by section 7 of Senate Bill No. 2090, chapter 348.

¹⁶⁷ Section 50-11.1-06.2 was also amended by section 6 of Senate Bill No. 2090, chapter 348.

require another criminal history record check.

SECTION 8. AMENDMENT. Subsection 1 of section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Whenever~~ If the department or the department's authorized agent finds, upon inspection, that the program, self-declaration, or premises is not in compliance with this chapter; or the rules adopted under this chapter, the department or the department's authorized agent shall issue a correction order to the program or self-declaration, provided the department does not revoke the license or self-declaration as a result of the noncompliance. The correction order must cite the specific statute or rule violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the program or self-declaration fails to comply with the correction order in a timely fashion. This section does not apply to an applicant's failure to comply with subsection 8 of section 50-11.1-03 or subdivision c of subsection 1 of section 50-11.1-16.

SECTION 9. AMENDMENT. Section 50-11.1-12 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-12. Violation of chapter or rules - Injunction.

The department ~~or the department's authorized agent~~ may seek injunctive action against an individual who provides early childhood services for which licensure is required, an early childhood program, ~~or~~ holder of a self-declaration, or in-home ~~registration document~~ provider in the district court through proceedings instituted by the attorney general on behalf of the department ~~or by a state's attorney on behalf of the authorized agent~~, if:

1. There is a violation of this chapter or a rule adopted under this chapter; or
2. An early childhood program ~~or~~ holder of a self-declaration, or in-home ~~registration document~~ provider, after notice and opportunity for hearing on the notice of noncompliance, ~~or~~ on the resumption of the fiscal sanction, or after administrative hearing confirming and upholding the fiscal sanction does not pay a properly assessed fiscal sanction in accordance with section 50-11.1-07.6.

SECTION 10. AMENDMENT. Section 50-11.1-16 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-16. Self-declaration - Approved application required - Fees.

1. a. An application for self-declaration is voluntary. ~~An~~ if an individual may apply applies for self-declaration from the department. ~~The, the~~ department or the department's authorized agent shall determine whether the standards for self-declaration have been met and shall approve or deny a self-declaration based upon that determination.
- b. An applicant for self-declaration shall pay a nonrefundable fee of fifteen dollars at the time the application is filed.
- c. An applicant for self-declaration, who currently holds a license or self-declaration, shall submit the nonrefundable fees with the application at

least sixty days and no more than ninety days before the expiration date of the applicant's current license or self-declaration. If the nonrefundable fees and application are submitted less than sixty days before expiration of the applicant's current license or self-declaration, the applicant shall submit with the application two times the regular nonrefundable fees.

2. All fees collected under this section must be paid to the department or the department's authorized agent and must be used to defray the cost of investigating, inspecting, and evaluating applications for self-declarations or to provide training to providers of early childhood services.

SECTION 11. AMENDMENT. Section 50-11.1-17 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-17. Application for self-declaration - Prerequisites for approval - Approval - Term.

1. Applications for self-declarations must be made on forms provided and in the manner prescribed by the department. The department or the department's authorized agent shall investigate the applicant and every individual living in the private residence and shall conduct a background check. The department or the department's authorized agent shall conduct the investigation in accordance with the rules adopted by the department and shall determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall approve a self-declaration within thirty days of receipt of a completed application and all supporting documents by the department and upon the applicant's declaration that:
 - a. The premises to be used are in fit and sanitary condition to provide for the health and safety of all children and ~~shall be~~are maintained according to the standards prescribed by the rules of the department;
 - b. The applicant is able to provide for the health and safety of each child receiving early childhood services from the applicant according to this chapter and standards prescribed by the department as set forth in its rules;
 - c. The applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application;
 - d. The applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial ~~cannot~~may not have occurred within five years of the application date;
 - e. The applicant has paid the required application fees;
 - f. The applicant has paid any penalties and sanctions assessed against the program required by sections 50-11.1-03 and 50-11.1-07.4;
 - g. The applicant is currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation and automated external defibrillator training program approved by the department;

- h. The emergency designee used by the applicant, if any, is currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation and automated external defibrillator training program approved by the department;
 - i. The applicant is currently certified in first aid through a training program approved by the department; and
 - i.j. The application ~~does~~ and supporting documents do not include any fraudulent or untrue representations.
2. The department may consider the early childhood services history of the applicant in determining issuance of a self-declaration document.
 3. The department may issue a provisional self-declaration document in accordance with the rules of the department.
 4. The department shall notify the holder of a self-declaration that the holder of a self-declaration is required to post a notice of late application at the self-declaration premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of a self-declaration.

SECTION 12. EFFECTIVE DATE. Sections 3, 4, 10, and 11 of this Act become effective on January 1, 2018.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 349

SENATE BILL NO. 2342

(Senator Grabinger)
(Representative Satrom)

AN ACT to provide for the creation of a task force on the prevention of sexual abuse of children; and to provide a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. TASK FORCE ON PREVENTION OF SEXUAL ABUSE OF CHILDREN - REPORT TO LEGISLATIVE MANAGEMENT AND GOVERNOR.

1. During the 2017-18 interim, a task force on the prevention of sexual abuse of children shall gather information concerning child sexual abuse throughout the state and develop recommendations to reduce child sexual abuse.
2. The task force consists of the following members:
 - a. One member of the senate appointed by the majority leader of the senate, one member of the house of representatives appointed by the majority leader of the house of representatives, and one member of the minority party appointed by the minority leaders of the senate and the house of representatives;
 - b. The executive director of the department of human services, or the executive director's designee;
 - c. A representative of a children's advocacy center or similar organization that assists in the investigation, prosecution, and treatment of child sexual and physical abuse cases, appointed by the executive director of the department of human services;
 - d. A representative of an organization involved in the prevention of child abuse, appointed by the executive director of the department of human services;
 - e. The superintendent of public instruction, or the superintendent's designee;
 - f. A representative of law enforcement, appointed by the attorney general; and
 - g. The executive director of the Indian affairs commission, or the executive director's designee.
3. The executive director of the department of human services, or the executive director's designee, shall convene the task force. The task force shall elect a presiding officer by a majority vote of the membership of the task force. The task force shall meet at the call of the presiding officer.
4. The task force shall:

-
- a. Gather information concerning child sexual abuse throughout the state;
 - b. Receive reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;
 - c. Create goals for state policy that would prevent child sexual abuse; and
 - d. Submit a final report with its recommendations to the governor and the legislative management.
5. The recommendations of the task force may include proposals for specific statutory changes and methods to foster cooperation among state agencies and between the state and local governments in adopting and implementing a policy addressing sexual abuse of children which may include age-appropriate curriculum for students in prekindergarten through grade twelve; training for school personnel on child sexual abuse; educational information to parents or guardians provided in school handbooks regarding the warning signs of a child being abused, along with any needed assistance, referral, or resource information; available counseling and resources for students affected by sexual abuse; and emotional and educational support for a child of abuse to continue to be successful in school.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 350

SENATE BILL NO. 2038

(Legislative Management)
(Human Services Committee)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the establishment of a task force on children's behavioral health; to amend and reenact section 15.1-07-34, subsection 1 of section 25-03.1-11, and section 25-03.1-26 of the North Dakota Century Code, relating to emergency hold limitations for mental health examinations; to provide for a report to the governor and the legislative management; and to repeal sections 15.1-19-19 and 15.1-19-24 of the North Dakota Century Code, relating to professional development training regarding the prevention of bullying and youth suicide.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-07-34 of the North Dakota Century Code is amended and reenacted as follows:

15.1-07-34. Provision of youth ~~mental~~behavioral health training to teachers, administrators, and ancillary staff.

1. ~~Once every~~Every two years, each school district shall provide a minimum of eight hours of ~~training~~professional development on youth ~~mental~~behavioral health to elementary, middle, and high school teachers, and administrators. Each school district shall encourage ancillary and support staff to participate in the ~~training~~professional development. ~~Based on the annual needs assessment of the school district, these hours must be designated from the following categories:~~

- a. Trauma;
- b. Social and emotional learning, including resiliency;
- c. Suicide prevention;
- d. Bullying;

~~The training must include:~~

- a-e. Understanding of the prevalence and impact of youth ~~mental~~behavioral health ~~disorders~~wellness on family structure, education, juvenile services, law enforcement, and health care and treatment providers;
- b-f. Knowledge of ~~mental~~behavioral health symptoms, ~~social stigmas, and risks,~~ and protective factors; and
- e-g. Awareness of referral sources and ~~evidence-based~~ strategies for appropriate interventions; ~~or~~

h. Other evidence-based strategies to reduce risk factors for students.

2. Each school district shall report the ~~outcome of the training~~professional development hours to the department of public instruction.
3. The superintendent of public instruction shall collaborate with regional education associations to disseminate information, training materials, and notice of training opportunities to school districts and nonpublic schools.

¹⁶⁸ **SECTION 2. AMENDMENT.** Subsection 1 of section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within ~~twenty-four hours, exclusive of holidays, of custody~~the time limitations set forth in section 25-03.1-26. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:
 - a. Evaluations of the respondent's physical condition and mental status.
 - b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
 - c. If the report concludes that the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
 - d. The signature of the examiner who prepared the report.

SECTION 3. AMENDMENT. Section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. A public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the individual admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, ~~either within twenty-four hours, exclusive of holidays, after admission or within seventy-two hours after admission, exclusive of holidays, if the individual is admitted with a serious physical condition or illness that requires prompt treatment,~~ shall either release:
 - a. Release the individual if the superintendent or director finds that the subject does not meet the emergency commitment standards; or file

¹⁶⁸ Section 25-03.1-11 was also amended by section 23 of Senate Bill No. 2042, chapter 97.

- b. File a petition if one has not been filed with the court of the individual's residence or the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.
2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be a person who is mentally ill or a person who is both mentally ill and chemically dependent, or a treatment hearing, if the respondent is alleged to be a person who is chemically dependent, to be held no later than four days, exclusive of weekends and holidays, after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 4. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Task force on children's behavioral health - Membership - Duties - Reports to governor and legislative management.

1. The task force on children's behavioral health is created for the purpose of assessing and guiding efforts within the children's behavioral health system to ensure a full continuum of care is available in the state.
2. The task force consists of the following members:
 - a. The superintendent of public instruction, or the superintendent's designee;
 - b. The executive director of the department of human services, or the executive director's designee;
 - c. The state health officer, or the state health officer's designee;
 - d. The director of the department of corrections and rehabilitation, or the director's designee;
 - e. The executive director of the Indian affairs commission, or the executive director's designee; and
 - f. The director of the committee on protection and advocacy, or the director's designee.
3. The executive director of the department of human services, or the executive director's designee, shall serve as the chairman of the task force. The task force shall meet at least quarterly. Additional meetings may be held at the discretion of the chairman.
4. The task force may request appropriate staff services from the department of human services.
5. The task force shall:

- a. Assess and guide efforts within the children's behavioral health system to ensure a full behavioral health continuum of care is available in the state;
- b. Make recommendations to ensure the children's behavioral health services are seamless, effective, and not duplicative;
- c. Identify recommendations and strategies to address gaps or needs in the children's behavioral health system;
- d. Engage stakeholders from across the continuum to assess and develop strategies to address gaps or needs in areas including:
 - (1) Education;
 - (2) Juvenile justice;
 - (3) Child welfare;
 - (4) Community; and
 - (5) Health; and
- e. Provide a report to the governor and the legislative management every six months regarding the status of the task force's efforts.

SECTION 5. REPORT TO GOVERNOR AND LEGISLATIVE MANAGEMENT.

Before July 1, 2018, the task force on children's behavioral health shall report its findings and recommendations and any proposed legislation necessary to implement the recommendations to the legislative management.

SECTION 6. REPEAL. Sections 15.1-19-19 and 15.1-19-24 of the North Dakota Century Code are repealed.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 351

SENATE BILL NO. 2115

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 1 of section 50-06-32 of the North Dakota Century Code, relating to the members of the autism spectrum disorder task force.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 50-06-32 of the North Dakota Century Code is amended and reenacted as follows:

1. The autism spectrum disorder task force consists of:
 - a. (1) The state health officer, or the officer's designee;
 - (2) The director of the department of human services, or the director's designee;
 - (3) ~~The director of special education~~superintendent of public instruction, or the ~~director's~~superintendent's designee; and
 - (4) The executive director of the protection and advocacy project, or the director's designee; and
- b. The following members appointed by the governor:
 - (1) A pediatrician with expertise in the area of autism spectrum disorder;
 - (2) A psychologist with expertise in the area of autism spectrum disorder;
 - (3) A college of education faculty member with expertise in the area of autism spectrum disorder;
 - (4) A behavioral specialist;
 - (5) A licensed teacher with expertise in the area of autism spectrum disorder;
 - ~~(5)~~(6) An occupational therapist;
 - ~~(6)~~(7) A representative of a health insurance company doing business in this state;
 - ~~(7)~~(8) A representative of a licensed residential care facility ~~for~~that provides care and services to individuals with autism spectrum disorder;
 - ~~(8)~~(9) A representative who is an enrolled member of a federally recognized Indian tribe;

~~(10)~~ An adult self advocate with autism spectrum disorder;

~~(11)~~ A parent of a child with autism spectrum disorder;

~~(9)~~~~(12)~~ A family member of an adult with autism spectrum disorder; and

~~(10)~~~~(13)~~ A member of the legislative assembly.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 352

SENATE BILL NO. 2118

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-06-21 and 50-06-22 and subsection 4 of section 53-12.1-09 of the North Dakota Century Code, relating to gambling disorder prevention, awareness, crisis intervention, rehabilitation, and treatment services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-21 of the North Dakota Century Code is amended and reenacted as follows:

50-06-21. ~~Compulsive gambling~~ Gambling disorder prevention, awareness, crisis intervention, rehabilitation, and treatment services.

The department of human services shall contract with qualified treatment service providers for the development and implementation of a program for gambling prevention, awareness, crisis intervention, rehabilitation, financial counseling, and mental health treatment services. The program may provide outpatient services, partial care services, aftercare services, intervention services, financial counseling services, consultation services, or other forms of preventive, rehabilitative, or treatment services for ~~compulsive gamblers~~ individuals with a gambling disorder. An individual who provides treatment services must be a ~~mental health professional as defined in section 25-03.1-02 and meet the minimum standards for certification as a gambling counselor as established by rule by that mental health professional's licensing board~~ licensed professional operating within the individual's scope of practice. An individual who provides financial counseling services must be a certified consumer credit counselor with an accredited financial counseling agency. The department of human services may establish a sliding payment scale for services under the program. The department of human services may establish a centrally located repository of educational materials on identifying and treating ~~compulsive gambling disorders~~. Any service fee collected by qualified treatment service providers for services provided under the contract must be applied toward the program's ~~compulsive gambling disorder~~ services. The term "qualified treatment service provider" means an entity based in North Dakota which is experienced in and capable of delivering ~~compulsive gambling disorder~~ education, prevention, awareness, crisis intervention, rehabilitation, financial counseling, and mental health treatment services as defined by the department of human services. The term "~~compulsive gambler~~" means an individual who is ~~chronically and progressively preoccupied with gambling and the urge to gamble and with~~ "gambling disorder" means a chronic, progressive disease that is characterized by a preoccupation with gambling, loss of control over gambling behaviors, and oftentimes disregard for the negative consequences as a result of gambling. Gambling disorder includes gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.

SECTION 2. AMENDMENT. Section 50-06-22 of the North Dakota Century Code is amended and reenacted as follows:

50-06-22. ~~Compulsive gambling~~ Gambling disorder prevention and treatment fund - Continuing appropriation.

Funds deposited in the ~~compulsive gambling~~ disorder prevention and treatment fund under section 53-12.1-09 are appropriated to the department on a continuing basis for the purpose of providing the services under section 50-06-21.

SECTION 3. AMENDMENT. Subsection 4 of section 53-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

4. Transfer of net proceeds:
 - a. Eighty thousand dollars must be transferred to the state treasurer each quarter for deposit in the ~~compulsive gambling~~ disorder prevention and treatment fund;
 - b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association;
 - c. Starting July 1, 2007, one hundred five thousand six hundred twenty-five dollars must be transferred to the state treasurer each quarter for deposit in the attorney general multijurisdictional drug task force grant fund; and
 - d. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 353

SENATE BILL NO. 2039

(Legislative Management)
(Human Services Committee)

AN ACT to create and enact section 50-06-06.14 of the North Dakota Century Code, relating to the placement of children in the least restrictive environment; to amend and reenact sections 50-06-01, 50-06-01.4, 50-06-05.2, 50-06-05.3, 50-06-05.4, 50-06-06.2, and 50-06-06.5, and subsection 1 of section 50-06-20 of the North Dakota Century Code, relating to the structure and duties of the department of human services with respect to behavioral health; to repeal chapter 25-10 and sections 25-02-02, 50-06-01.2, and 50-06-23 of the North Dakota Century Code, relating to mental health services, the additional location for a hospital for the mentally ill, and the assumption of duties by the department of human services; to provide for transition; to provide a statement of legislative intent; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-01 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01. Definition.

As used in this chapter, unless the context otherwise requires, "~~department~~" means ~~the department of human services.~~

1. "Behavioral health" means the planning and implementation of preventive, consultative, diagnostic, treatment, crisis intervention, and rehabilitative services for individuals with mental, emotional, or substance use disorders, and psychiatric conditions.
2. "Behavioral health provider" means any licensed or accredited behavioral health provider in this state.
3. "Department" means the department of human services.
4. "Human services" means services provided to an individual or an individual's family in need of services to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.

¹⁶⁹ **SECTION 2. AMENDMENT.** Section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.4. Structure of the department.

¹⁶⁹ Section 50-06-01.4 was also amended by section 3 of House Bill No. 1117, chapter 332, and section 2 of House Bill No. 1136, chapter 331.

1. The department includes the state hospital, the regional human service centers, a vocational rehabilitation unit, and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

a. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, children's trust fund, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.

b. Administration of programs for individuals with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.

c. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult family care homes, committee on aging, and the fund matching program for city or county tax levies for senior citizen activities and services.

~~d. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.~~

~~e. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public. Administration of behavioral health programs, including:~~

~~(1) A policy division responsible for reviewing and identifying service needs and activities in the state's behavioral health system in an effort to ensure health and safety, access to services, and quality of services; establishing quality assurance standards for the licensure of substance use disorder program services and facilities; and providing policy leadership in partnership with public and private entities; and~~

~~(2) A service delivery division responsible for providing chronic disease management, regional intervention services, and twenty-four-hour crisis services for individuals with behavioral health disorders.~~

~~f.e.~~ Administration of economic assistance programs, including temporary assistance for needy families, the supplemental nutrition assistance

program, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.

g-f. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, utilization control, and claims processing.

2. The executive director shall consult with and maintain a close working relationship with the state department of health; with the department of corrections and rehabilitation and the superintendents of the school for the deaf and the North Dakota vision services - school for the blind to develop programs for individuals with developmental disabilities; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

¹⁷⁰ **SECTION 3. AMENDMENT.** Section 50-06-05.2 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.2. Regional human service centers - Licensure - Collocation with county social service boards.

Human services must be delivered through regional human service centers in the areas designated by the governor's executive order 1978-12 dated October 5, 1978. ~~Services provided by regional human service centers must include those services formerly provided by mental health and retardation service units and area social service centers. The regional human service centers must be accredited by a national accrediting body and~~ are subject to licensing by the department. The department shall adopt rules and standards for the licensing ~~and for the operation of the regional human service centers. No~~ human service center may not operate without a license issued hereunder in accordance with this section. Regional human service centers are authorized to receive federal and other funds available to finance, in whole or in part, the services and operations of the centers. Any county social service board collocating its offices with a regional human service center must, within the limits of legislative appropriations, be reimbursed up to fifty percent of the amount expended for space costs in excess of the amount provided by the federal government.

¹⁷¹ **SECTION 4. AMENDMENT.** Section 50-06-05.3 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.3. Regional human service centers - Powers - Duties - Human service advisory groups.

1. ~~Regional human service centers organized under this chapter are those centers established to provide human services as authorized by law. The term "human service" means service provided to individuals or their families in need thereof to help them achieve, maintain, or support the highest level of personal independence and economic self-sufficiency, including health, mental health, education, manpower, social, food and nutrition, and housing service. Regional human service centers shall function as regional administrative units~~

¹⁷⁰ Section 50-06-05.2 was also amended by section 4 of House Bill No. 1136, chapter 331.

¹⁷¹ Section 50-06-05.3 was also amended by section 5 of House Bill No. 1136, chapter 331.

~~established, within the multicounty areas designated by the governor's executive order 1978-12 dated October 5, 1978, to provide for the planning and delivery of human services:~~

2. Regional human service centers shall provide human services to all eligible individuals and families to help ~~them~~individuals and families achieve or maintain social, emotional, and economic self-sufficiency; ~~prevent, by providing human services to:~~
 - a. Prevent, reduce, or eliminate dependency; ~~prevent~~
 - b. Prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests; aid
 - c. Aid in the preservation, rehabilitation, and reuniting of families; ~~prevent~~
 - d. 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~~
 - e. Secure referral or admission for institutional care; ~~provide~~
 - f. Provide outpatient diagnostic and treatment services; ~~provide~~
 - g. Provide information concerning guardianship to people interested in becoming or who are guardians; and ~~provide~~
 - h. Provide rehabilitation and crisis services for patients with mental or emotional, or substance use disorders, an intellectual disability, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility.
2. Regional human service centers shall deliver services in the manner prescribed by the department.
3. ~~The director shall appoint a human service advisory group for each human service center consisting of up to thirteen members~~Each human service center must have a human services advisory group consisting of the county social service directors of the region served, the public health directors of the region served, two current county commissioners appointed by the executive director of the department, and five additional members appointed by the executive director of the department. Each advisory group member must be a resident of the region the member is appointed to serve. ~~The director shall appoint two current county commissioners and one current county social service board member to serve as members of a human service advisory group. The director may appoint an additional current commissioner to serve in lieu of the current county social service board member. The term~~term of office ~~must be for each appointed member is~~ two years and arranged so that the term of ~~one-half~~three of the appointed members expires at the end of the first year and the term of the remaining four appointed members expires at the end of the second year, ~~except for those first members appointed, three members shall serve a one-year term and four members shall serve a two-year term.~~ The director shall select the appointed members of each human service advisory group on the basis of population of the counties in the region served by the human service center. Each county in the region must be

represented by at least one member on the human service advisory group. To the extent possible, appointed membership of the advisory group must reflect regional interests in the fields of developmental disabilities, social services, mental health, and ~~alcoholism and drug abuses~~ substance use disorders. The executive director of the department shall appoint a chairman for each advisory group from the membership of the advisory group. The executive director of the department shall fill a vacancy occurring within an advisory group for other than the expiration of a term in the same manner as original appointments, except that appointments must be made only for the unexpired term. The department shall compensate appointed members of a human service advisory group at the rate of forty-five dollars per day, not to exceed twenty-five days in any one year. The department also shall pay members for mileage and actual expenses incurred in attending meetings and in the performance of their official duties in the amounts provided by law for other state officers.

SECTION 5. AMENDMENT. Section 50-06-05.4 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.4. Duties of human service advisory groups.

Each human service advisory group of the regional human service centers shall perform the following duties:

1. Provide information to the department relative to needs assessment and the planning and development of health and social resources for the effective and efficient delivery of high-quality human services fully accessible to all citizens.
2. Review services and programs provided by the regional human service centers and make periodic recommendations ~~the advisory group may have~~ for improvement in services, programs, or facilities.
3. Promote cooperation and working agreements with public agencies, including public health and corrections and private human service agencies.
4. Promote local and regional financing from public and private sources.

¹⁷² **SECTION 6. AMENDMENT.** Section 50-06-06.2 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.2. Clinic services - Provider qualification - Utilization of federal funds.

Within the limits of legislative appropriation therefor and in accordance with rules established by the department, the department may defray the costs of preventive diagnostic, therapeutic, rehabilitative, or palliative items or services furnished medical assistance eligible individuals by regional human service centers or designated behavioral health providers. Within the limits of legislative appropriations and to the extent permitted by state and federal law and regulations established thereunder, it is the intent of the legislative assembly that federal funds available under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] be utilized to defray the costs of identifiable mental health clinic services furnished eligible individuals in regional human service centers and that federal funds available under title XX of the Social

¹⁷² Section 50-06-06.2 was also amended by section 7 of House Bill No. 1043, chapter 57.

Security Act [42 U.S.C. 1397 et seq.] be utilized to defray the costs of identifiable social services furnished eligible individuals by county social service boards and regional human service centers.

¹⁷³ **SECTION 7. AMENDMENT.** Section 50-06-06.5 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.5. Continuum of services for chronically mentally ill individuals with serious and persistent mental illness.

1. The department of human services shall develop a plan for an integrated, multidisciplinary continuum of services for ~~chronically mentally ill individuals with serious and persistent mental illness~~. The continuum may consist of an array of services provided by private mental health professionals, private agencies, county social service agencies, human service centers, community-based residential care and treatment facilities, and private and public inpatient psychiatric hospitals. ~~To the extent feasible~~When appropriate, access to the continuum must be through human service centers. Within the limits of legislative appropriations, the plan for a continuum may include:
 1. a. Programs, and appropriate related facilities, to provide socialization skills.
 2. b. Programs, and appropriate related facilities, to provide basic living skills.
 3. c. ~~Appropriate residential facilities and other housing options.~~
 4. d. Appropriate training, placement, and support to enhance potential for employment.
 5. e. Appropriate delivery and control of necessary medication.
 6. f. Appropriate economic assistance.
 7. g. An inpatient facility with appropriate programs to respond to persons who require hospitalization.
 8. h. Peer and recovery support.
 9. i. Crisis service that is available twenty-four hours a day seven days a week.
2. The continuum of care must provide that a person requiring treatment be submitted to the least restrictive available conditions necessary to achieve the purposes of treatment. The department shall ensure appropriate cooperation with county social service agencies and private providers in achieving the continuum of care.

SECTION 8. Section 50-06-06.14 of the North Dakota Century Code is created and enacted as follows:

50-06-06.14. Placement of children - Least restrictive care.

The department and county social service boards shall explore the option of kinship care when a child is unable to return home due to safety concerns. Absent

¹⁷³ Section 50-06-06.5 was also amended by section 5 of House Bill No. 1117, chapter 332.

kinship options, the department and county social service boards shall provide permanency options that are in the least restrictive care and near the family's home as required by the federal Adoption and Safe Family Act of 1997 [Pub. L. 105-89; 111 Stat. 2115; 42 U.S.C. 671].

¹⁷⁴ **SECTION 9. AMENDMENT.** Subsection 1 of section 50-06-20 of the North Dakota Century Code is amended and reenacted as follows:

1. The state shall bear the cost, in excess of the amount provided by the federal government, of:
 - a. As provided in section 50-24.1-14, medical assistance services provided under chapter 50-24.1;
 - b. Energy assistance program benefits provided under subsection 49~~18~~ of section 50-06-05.1;
 - c. Supplements provided under chapter 50-24.5 as basic care services;
 - d. Services, programs, and costs listed in section 50-09-27;
 - e. Welfare fraud detection programs; and
 - f. Special projects approved by the department and agreed to by any affected county social service board.

¹⁷⁵ **SECTION 10. REPEAL.** Chapter 25-10 and sections 25-02-02, 50-06-01.2, and 50-06-23 of the North Dakota Century Code are repealed.

SECTION 11. TRANSITION. All unexpired terms of members of a human service advisory group under section 50-06-05.3 are deemed expired as of July 31, 2017. An individual who is a member of a human service advisory group as of July 31, 2017, who is otherwise qualified, may be reappointed to the human service advisory group on which the individual previously served.

SECTION 12. LEGISLATIVE INTENT. It is the intent of the sixty-fifth legislative assembly that the sixty-sixth legislative assembly appropriate funds to the department of human services to help defray the cost of the accreditation of regional human services centers required under section 3 of this Act.

SECTION 13. EFFECTIVE DATE. Section 3 of this Act becomes effective on August 1, 2021.

Approved April 18, 2017

Filed April 18, 2017

¹⁷⁴ Section 50-06-20 was also amended by section 8 of House Bill No. 1136, chapter 331.

¹⁷⁵ Section 50-06-23 was amended by section 9 of House Bill No. 1136, chapter 331.

SALES AND EXCHANGES

CHAPTER 354

SENATE BILL NO. 2289

(Senators Armstrong, Cook, Klein)
(Representatives Howe, Vigesaa, Delmore)

AN ACT to amend and reenact sections 51-07-01.2, 51-07-02.2, and 51-26-06 of the North Dakota Century Code, relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

51-07-01.2. Prohibited practices under farm equipment dealership contracts.

A

1. Notwithstanding the terms of any contract, a manufacturer, wholesaler, or distributor of farm implements, machinery, or repair parts who enters into a contract with any person engaged in the business of selling and retailing farm implements and repair parts for farm implements may not:
 - 1-a. ~~Require or attempt to require~~ Require or attempt to require a farm equipment dealer to accept delivery of farm equipment, parts, or accessories that the farm equipment dealer has not voluntarily ordered or require the farm equipment dealer to maintain or stock a level of equipment, parts, or accessories except as provided in subdivision b.
 - 2-b. Condition or attempt to condition the sale of farm equipment, parts, or accessories on a requirement that the farm equipment dealer also purchase other goods or services, or purchase a minimum quantity of farm equipment as a condition of filling an order for farm equipment, except that a farm equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any farm equipment used in the trade area and telecommunication necessary to communicate with the farm equipment manufacturer.
 - 3-c. ~~Require or attempt to require~~ Require or attempt to require a farm equipment dealer into a refusal to purchase farm equipment manufactured by another farm equipment manufacturer.
 - 4-d. Require a farm equipment dealer to separate the line-makes operating within the dealer's facility by requiring the separation of personnel, inventory, service areas, display space, or otherwise dictate the method, manner, number of units, or the location of farm equipment displays at the dealer's facility. This subdivision does not prevent a farm equipment dealer

- and manufacturer from agreeing to those terms if the agreement was supported by separate and valuable consideration. The issuance, reissuance, or extension of a dealership contract alone is not separate and valuable consideration.
- e. Require a farm equipment dealer to either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing relationship with another manufacturer in order to continue, renew, reinstate, or enter a dealer agreement or to participate in any program discount, credit, rebate, or sales incentive. This subdivision does not prevent a farm equipment dealer and manufacturer from agreeing to establish or maintain exclusive facilities for separate and valuable consideration. The issuance, reissuance, or extension of a dealership contract alone is not separate and valuable consideration.
- f. Discriminate in the prices charged for farm equipment of ~~likesimilar~~ grade and quality sold by the farm equipment manufacturer to similarly situated farm equipment dealers. This ~~subsection~~subdivision does not prevent the use of differentials that make only due allowance for differences in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the farm equipment is sold or delivered by the farm equipment manufacturer. This ~~section~~subdivision does not diminish the manufacturer's, wholesaler's, or distributor's ability to provide volume discounts, bonuses, or special machine ordering programs commonly used in the industry.
- 5-g. Attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership contract for any reason other than failure of the farm equipment dealer to substantially comply with the material terms of the written contract between the parties or if the attempt or threat is based on the results of a circumstance beyond the farm equipment dealer's control, including a sustained drought or other natural disaster in the dealership market area or a labor dispute. A substantial change in the competitive circumstances includes the removal of authorization to operate at a location from where the dealer is currently operating or the unreasonable removal of a product line or segment.
- h. Require a farm equipment dealer to unreasonably remodel, renovate, or recondition the dealer's facilities, change the location of the facilities, or make unreasonable alterations to the dealership premises. A request for a dealer to remodel, renovate, or recondition the dealer's facilities, change the location of the facilities, or make alterations to the dealership premises must be considered in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the dealer's market for the sale of farm equipment. A facility modification request is unreasonable if the request is within seven years of a farm equipment dealer's most recent facility remodel, renovation, or reconditioning.
- i. 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. Failure to deny the request within sixty days is deemed an approval.

- j. Conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive payment more than one year after the date of the warranty or incentive payment. 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. The audit and chargeback provisions in this subdivision apply to all incentive and reimbursement programs that are subject to audit by a manufacturer. Before imposing a chargeback, a manufacturer shall identify each claim at issue and provide the dealer with written explanation for the proposed chargeback for each claim. The cumulative value of any chargeback, fees, penalties, or adverse action for an individual claim may not exceed the total direct compensation received by the dealer for the claim at issue. Thereafter, the manufacturer shall provide the dealer a reasonable time, no less than forty-five days, to present additional information regarding a claim at issue.
- k. Use an unreasonable, arbitrary, or unfair sales, service, or other performance standard in determining a farm equipment dealer's compliance with a contract or program. Before applying any sales, service, or other performance standard to a farm equipment dealer, a manufacturer shall communicate the performance standard in writing in a clear and concise manner, including a detailed explanation of the criteria, calculations, methodology, and data used to establish the standard.
- l. Require a farm equipment dealer in this state to enter an agreement with the manufacturer or any other party which requires:
 - (1) The law of another jurisdiction to apply to a dispute between the dealer and manufacturer;
 - (2) The dealer to bring an action against the manufacturer in a venue outside of this state;
 - (3) The dealer waive the right to have all of this state's statutory and common law apply;
 - (4) Reducing, modifying, or eliminating the dealer's right to resolve a dispute in a state or federal court in this state; or
 - (5) The dealer to agree to arbitration or waive their rights to bring a cause of action against the manufacturer, 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. Renewal, reinstatement, or continuation of a dealer agreement alone is not separate and valuable consideration.
- 2. As used in this section "farm equipment" and "farm implements" means all vehicular implements and attachment units, designed and used primarily for planting, cultivating, or harvesting farm products or used primarily in connection with the production of agricultural produce or products, livestock, or poultry on farms, and which are operated, drawn, or propelled by motor or animal power.

SECTION 2. AMENDMENT. Section 51-07-02.2 of the North Dakota Century Code is amended and reenacted as follows:

51-07-02.2. Dealership transfers.

1. A retailerdealer of automobiles or trucks, farm equipment, or parts for the automobiles or trucks, or farm equipment may not transfer, assign, or sell a franchisedealer agreement to another person unless the retailerdealer first provides written notice to the franchisormanufacturer or distributor of the intended action. Within sixty days of receiving the notice, the franchisormanufacturer or distributor must approve or deny the action. If the franchisormanufacturer or distributor denies the action, the franchisormanufacturer or distributor shall provide material reasons for the denial to the franchisedealer. If the franchisormanufacturer or distributor does not respond within the sixty-day period, the action is deemed approved. ~~The refusal~~
2. A denial by the franchisormanufacturer or distributor to accept a proposed transferee who meets the written, reasonable, and uniformly applied standards of qualifications of the franchisormanufacturer or distributor relating to the financial qualifications of the transferee and business experience of the transferee is presumed to be unreasonable. If an action is rejecteddenied by the franchisormanufacturer or distributor, the franchisedealer may file an action for determination of a violation of this sectionssubsection. The retailerdealer may elect to pursue either the retailerdealer's remedy under the contract or the remedy provided in this sectionssubsection. The franchisormanufacturer or distributor has the burden of proof with respect to regarding all issues raised in the action. The court shall approve the transfer unless the franchisormanufacturer or distributor can prove the proposed transferee does not meet the written, reasonable, and uniformly applied standards regarding financial qualifications and business experience.
3. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2.

SECTION 3. AMENDMENT. Section 51-26-06 of the North Dakota Century Code is amended and reenacted as follows:

51-26-06. Application - ~~Not to affect prior contracts~~ - Dealers reimbursed for laborwarranty repair.

~~This chapter applies to any new farm machinery sold after July 31, 2001, and does not invalidate, impair, or otherwise infringe upon the specific requirements of any contract between a dealer and a manufacturer entered before August 1, 2001. However, if~~

1. If warranty repair work or service is performed for a consumer by a farm equipment dealer under a manufacturer's express warranty, the manufacturer shall reimburse the dealer at an hourly labor rate that is the same or greater than the hourly labor rate the dealer currently charges consumers for nonwarranty repair work. provide the dealer with reasonable and adequate compensation for diagnostic work, as well as repair service, parts, and labor, for warranty work compensation, a product improvement program, a maintenance plan, an extended warranty, a certified preowned warranty or a service contract, issued by the manufacturer or distributor or its common entity. In addition, a manufacturer shall provide reasonable and adequate time

allowances for the diagnosis and performance of warranty work and service for the work performed and the time allowances may not be less than the average time spent by the dealer on similar work for nonwarranty customers. The hourly labor rate and parts reimbursement rate paid by a manufacturer to the dealer under this subsection may not be less than the average rate charged by the dealer for similar service or sales to nonwarranty customers. A manufacturer or distributor may not pay its dealers an amount of money for warranty work, parts, or service that is less than the average rate charged by the dealer for similar service or sales to nonwarranty customers. The dealer may accept the manufacturer's or supplier's warranty reimbursement terms and conditions in lieu of the above.

2. The compensation required under subsection 1 includes transportation services, including labor and equipment, necessary to transport equipment under warranty to perform the service and to return the equipment to the customer. If transporting the equipment to the dealership to perform the service is not mechanically or financially feasible, the compensation required under subsection 1 includes travel to and from the location of the equipment if the service or repairs are performed at the location of the equipment. Reimbursement for travel time required under this subsection may not exceed six hours.
3. A manufacturer shall pay a dealer on a claim made by a dealer under this section within thirty days of the approval of the claim. The manufacturer shall either approve or disapprove a claim within thirty days after the claim is submitted to the manufacturer. The manufacturer may prescribe the manner in which and the forms on which the dealer must present the claim. A claim not specifically disapproved in writing within thirty days after the manufacturer receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.
4. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2.

Approved March 16, 2017

Filed March 16, 2017

CHAPTER 355**HOUSE BILL NO. 1139**

(Representative Keiser)

AN ACT to create and enact a new section to chapter 51-19 of the North Dakota Century Code, relating to joint employer liability protection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 51-19 of the North Dakota Century Code is created and enacted as follows:

Franchisor-franchisee liability protection.

Notwithstanding any other provision of law or any voluntary agreement between the United States department of labor and a franchisee, a franchisee or an employee of a franchisee is not considered an employee of the franchisor.

Approved March 21, 2017

Filed March 22, 2017

SOCIAL SECURITY

CHAPTER 356

HOUSE BILL NO. 1296

(Representative Keiser)

AN ACT to amend and reenact section 52-04-01.1 of the North Dakota Century Code, relating to electronic filing of employer unemployment contribution and wage reports; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

52-04-01.1. Electronic filing of contribution and wage reports - Electronic payment of contributions - Assessments.

~~An~~Each employer that ~~employs more than twenty-four employees at any time~~ ~~shall~~required to file contribution and wage reports ~~shall file the reports~~ by an electronic method approved by the bureau beginning with the calendar quarter in which the employer ~~is first employs more than twenty-four employees~~required to file a report. An employer that does not comply with the requirements to file reports electronically is deemed to have failed to submit any employer's contribution and wage report as provided in section 52-04-11. All ~~payers making contribution~~ payments ~~on behalf of more than one employer shall make all payments~~must be paid electronically.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2017.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 357

HOUSE BILL NO. 1196

(Representatives D. Ruby, Boschee, Dobervich, Keiser, Sukut)
(Senators Casper, Marcellais, Poolman)

AN ACT to amend and reenact section 52-04-22 of the North Dakota Century Code, relating to the unemployment insurance federal advance interest repayment fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-22 of the North Dakota Century Code is amended and reenacted as follows:

52-04-22. Federal advance interest repayment fund - Continuing appropriation.

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

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

Moneys in this fund may also be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund also may be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund also may be used for the purpose of paying building lease costs of office facilities leased by job service North Dakota. Moneys in this fund may be used for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund may be used for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund may be used for the purposes of re-employment programs to ensure the integrity of the unemployment insurance program in this state. Moneys in this fund may be used to administer the unemployment insurance program and may be used to pay expenses incurred by job service North Dakota which are not payable with federal grant or state general funds. Moneys in this fund are hereby appropriated for the purposes specified in this section including the purpose of paying principal and

interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund are appropriated for the purpose of paying the principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund are appropriated for the purpose of paying building lease costs of office facilities leased by job service North Dakota. Moneys in this fund are appropriated for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund are appropriated for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund are appropriated for the purposes of re-employment programs to ensure the integrity of the unemployment insurance program in this state. Moneys in this fund are appropriated to administer the unemployment insurance program and to pay expenses incurred by job service North Dakota which are not payable with federal grant or state general funds. The federal advance interest payment fund must maintain a minimum balance to pay interest due on advances to the state trust fund. The minimum balance must be calculated annually by multiplying the average calendar year benefits paid for the preceding five completed calendar years by one percent. The federal advance interest repayment fund may drop below the annual minimum balance only if payment is required on interest due on advances to the state trust fund.

Approved March 21, 2017

Filed March 22, 2017

SPORTS AND AMUSEMENTS

CHAPTER 358

SENATE BILL NO. 2210

(Senators Sorvaag, Schaible)
(Representatives Dockter, Steiner)

AN ACT to amend and reenact section 53-01-07 of the North Dakota Century Code, relating to the commissioner of combative sports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-01-07 of the North Dakota Century Code is amended and reenacted as follows:

53-01-07. Duties of state 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 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. Charge a fee equal to the actual cost incurred to regulate the competitions and exhibitions.~~
4. Adopt rules allowing the secretary of state to perform screening tests for controlled substances, as defined in section 19-03.1-01, on boxers, kickboxers, and mixed style fighters participating in a competition or an exhibition.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 359

HOUSE BILL NO. 1216

(Representatives Maragos, Brabandt, Delmore, Dockter, D. Johnson, Kasper, Nathe,
Schatz, Schmidt)
(Senators Armstrong, Poolman, Schaible)

AN ACT to amend and reenact section 53-06.1-01, subsection 4 of section 53-06.1-01.1, subsection 1 of section 53-06.1-06, subsection 5 of section 53-06.1-11, and section 53-06.1-14 of the North Dakota Century Code, relating to the use of electronic pull tabs and electronic pull tab devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁶ **SECTION 1. AMENDMENT.** Section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01. Definitions.

As used in this chapter:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, gaming tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Charitable organization" means an organization whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or similar condition of public concern.
3. "Civic and service organization" means an organization whose primary purpose is to promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis, or similar organization.
4. "Closely related organization" means an organization that controls, is controlled by, or is under common control with another organization. Control exists when an organization has the authority or ability to elect, appoint, or remove a majority of the officers or directors of another organization or, by policy, contract, or otherwise, has the authority or ability to directly or indirectly direct or cause the direction of the management or policies of another organization.
5. "Distributor" means a person that sells, markets, or distributes equipment designed for use in the conduct of games.
6. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.

¹⁷⁶ Section 53-06.1-01 was also amended by section 1 of House Bill No. 1415, chapter 360.

7. "Electronic pull tab device" means a device, approved by the attorney general, which electronically displays pull tabs.
8. "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.
- ~~8-9.~~ "Fraternal organization" means an organization, except a school fraternity, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code.
- ~~9-10.~~ "Games" means games of chance.
- ~~10-11.~~ "Gross proceeds" means all cash and checks received from conducting games.
- ~~11-12.~~ "Licensed organization" means an eligible organization licensed by the attorney general.
- ~~12-13.~~ "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab or bingo card dispensing device or bingo card marking device, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.
- ~~13-14.~~ "Net income" means gross proceeds less cash prizes, cost of merchandise prizes, and expenses to conduct the gaming activity.
- ~~14-15.~~ "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
- ~~15-16.~~ "Permit" means a local permit or charity local permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.
- ~~16-17.~~ "Person" means any person, partnership, corporation, limited liability company, association, or organization.
- ~~17-18.~~ "Prize board" means a board used with pull tabs to award cash or merchandise prizes.

- 18-19. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.
- 19-20. "Public-spirited organization" means an organization whose primary purpose is for scientific research, amateur sports competition, safety, literary, arts, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, community medical care, community recreation, or similar organization, which does not meet the definition of any other type of eligible organization. However, a nonprofit organization or a group of people recognized as a public-spirited organization by a governing body of a city or county for obtaining a permit does not need to meet this definition.
- 20-21. "Pull tab" means a folded or banded ticket or jar ticket, a pull tab card with break-open tabs, or an electronic pull tab displaying concealed numbers or symbols or combinations of concealed numbers and symbols which are exposed by a player to determine the outcome. The terms "pull tab" and "jar ticket" are used interchangeably unless otherwise stated. A winning pull tab contains certain symbols, numbers, or combinations of symbols and numbers and may contain multiple winning symbols, numbers, or combinations of symbols and numbers which have been previously designated as winning symbols or numbers.
22. "Religious organization" means a church, body of communicants, or group gathered in common membership whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances.
- 24-23. "Veterans organization" means any congressionally chartered post organization, or any branch or lodge or chapter of a nonprofit national or state organization whose membership consists of individuals who are or were members of the armed services or forces of the United States. The organization must have qualified for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code.

¹⁷⁷ **SECTION 2. AMENDMENT.** Subsection 4 of section 53-06.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The commission shall adopt rules in accordance with chapter 28-32, to administer and regulate the gaming industry, including methods of conduct, play, and promotion of games; minimum procedures and standards for recordkeeping and internal control; requiring tax returns and reports from organizations or distributors; methods of competition and doing business by distributors and manufacturers; acquisition and use of gaming equipment; quality standards or specifications for the manufacture of pull tabs, paper bingo cards, electronic pull tab devices, pull tab and bingo card dispensing devices, and bingo card marking devices; to ensure that net proceeds are used for educational, charitable, patriotic, fraternal, religious, or public-spirited uses; to protect and promote the public interest; to ensure fair and honest games; to ensure that fees and taxes are paid; and to prevent and detect unlawful gambling activity.

¹⁷⁷ Section 53-06.1-01.1 was also amended by section 2 of House Bill No. 1415, chapter 360.

¹⁷⁸ **SECTION 3. AMENDMENT.** Subsection 1 of section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. No person, except a member, volunteer, an employee of a licensed organization or an organization that has a permit, or an employee of a temporary employment agency who provides services to a licensed organization, may manage, control, or conduct any game. "Member" includes a member of an auxiliary organization. In conducting pull tabs, prize boards, or bingo through a dispensing device, selling pull tabs through a pull tab device, selling raffle tickets, or conducting sports pools, the attorney general may allow an employee of an alcoholic beverage establishment to provide limited assistance to an organization.

¹⁷⁹ **SECTION 4. AMENDMENT.** Subsection 5 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

5. For a site where bingo is not the primary game:
 - a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to one hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving only a jar bar, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving only a dispensing device, electronic pull tab device, or both a jar bar and dispensing device or electronic pull tab device, the monthly rent for pull tabs may not exceed an additional three hundred twenty-five dollars.
 - b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving either a jar bar or dispensing device, or ~~both~~ electronic pull tab device, or any combination, the monthly rent may not exceed four hundred dollars.

¹⁸⁰ **SECTION 5. AMENDMENT.** Section 53-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-14. Distributors and manufacturers.

1. A manufacturer of pull tabs, bingo cards, electronic pull tab devices, or bingo card marking devices shall apply annually for a license and pay a license fee of four thousand dollars. A manufacturer of pull tab dispensing devices shall apply annually for a license and pay a license fee of one thousand dollars. A manufacturer of fifty-fifty raffle systems shall apply annually for a license and pay a license fee of five hundred dollars. A distributor shall apply annually for a license and pay a license fee of one thousand five hundred dollars. Application must be made before the first day of April in each year on a form prescribed by the attorney general.

¹⁷⁸ Section 53-06.1-06 was also amended by section 5 of House Bill No. 1415, chapter 360.

¹⁷⁹ Section 53-06.1-11 was also amended by section 7 of House Bill No. 1415, chapter 360.

¹⁸⁰ Section 53-06.1-14 was also amended by section 8 of House Bill No. 1415, chapter 360.

2. A licensed distributor may not sell, market, or distribute gaming equipment except to a licensed distributor, licensed organization, organization that has a permit, or other person authorized by gaming rule or the attorney general. A manufacturer of a pull tab dispensing device, pull tab, electronic pull tab device, bingo card marking device, bingo card, or fifty-fifty raffle system may only sell, market, or distribute the manufacturer's pull tab dispensing device and processing chip encoded with proprietary software, pull tab, electronic pull tab device, bingo card marking device, bingo card, or fifty-fifty raffle system to a licensed distributor. A licensed distributor may purchase or acquire a pull tab dispensing device and processing chip encoded with proprietary software, pull tab, electronic pull tab device, bingo card marking device, bingo card, or fifty-fifty raffle system only from a licensed manufacturer or licensed distributor. However, a distributor may purchase or acquire a used pull tab dispensing device or electronic pull tab device from a licensed organization. A distributor may not duplicate a manufacturer's processing chip encoded with proprietary software. No gaming equipment or prize may be sold or leased at an excessive price.
3. A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs and bingo cards, raffle board, punchboard, sports pool board, calcutta board, and series of paddlewheel ticket cards sold or otherwise provided to a licensed organization and shall purchase the stamps from the attorney general for thirty-five cents each. Ten cents of each stamp sold by the attorney general, up to thirty-six thousand dollars per biennium, must be credited to the attorney general's operating fund to defray the costs of issuing and administering the gaming stamps.
4. A licensed organization, organization that has a permit, licensed manufacturer, or North Dakota wholesaler of liquor or alcoholic beverages may not be a distributor or stockholder of a distributor. A distributor may not be a stockholder of a manufacturer.
5. In addition to the license fee, the attorney general may require advance payment of any fee necessary to pay the cost of a record check of an applicant according to subdivision c of subsection 5 of section 53-06.1-06.
6. A licensed manufacturer may not refuse to sell deals of pull tabs, paper bingo cards, or gaming equipment to a licensed distributor unless:
 - a. A specific deal of pull tabs is sold on an exclusive basis;
 - b. The manufacturer does not sell deals of pull tabs, paper bingo cards, or gaming equipment to any distributor in the state;
 - c. A gaming law or rule prohibits the sale;
 - d. The distributor has not provided the manufacturer with proof of satisfactory credit or is delinquent on any payment owed to the manufacturer; or
 - e. The distributor has not met the manufacturer's standard minimum order quantity and freight terms.

Approved April 20, 2017

Filed April 21, 2017

CHAPTER 360

HOUSE BILL NO. 1415

(Representatives Delmore, Blum, M. Johnson)
(Senator Sorvaag)

AN ACT to amend and reenact subsection 12 of section 53-06.1-01, subsections 1 and 4 of section 53-06.1-01.1, subsections 2 and 3 of section 53-06.1-03, subsections 1 and 3 of section 53-06.1-06, subsection 1 of section 53-06.1-10.2, subsection 1 of section 53-06.1-11, subsection 3 of section 53-06.1-14, and subsection 8 of section 53-06.1-15.1 of the North Dakota Century Code, relating to games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸¹ **SECTION 1. AMENDMENT.** Subsection 12 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab ~~or bingo card~~ dispensing device ~~or~~ bingo card marking device, or fifty-fifty raffle system, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.

¹⁸² **SECTION 2. AMENDMENT.** Subsection 1 of section 53-06.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The state gaming commission consists of the chairman and four other members appointed by the governor, with the consent of the senate. The members serve three-year terms and until a successor is appointed and qualified. If the senate is not in session when the term of a member expires, the governor may make an interim appointment, and the interim appointee holds office until the senate confirms or rejects the appointment. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so ~~that one term expires~~ no more than two terms expire each July first.

SECTION 3. AMENDMENT. Subsection 4 of section 53-06.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The commission shall adopt rules in accordance with chapter 28-32, to administer and regulate the gaming industry, including methods of conduct, play, and promotion of games; minimum procedures and standards for recordkeeping and internal control; requiring tax returns and reports from

¹⁸¹ Section 53-06.1-01 was also amended by section 1 of House Bill No. 1216, chapter 359.

¹⁸² Section 53-06.1-01.1 was also amended by section 2 of House Bill No. 1216, chapter 359.

organizations or distributors; methods of competition and doing business by distributors and manufacturers; acquisition and use of gaming equipment; quality standards or specifications for the manufacture of pull tabs, paper bingo cards, pull tab ~~and bingo card~~ dispensing devices, ~~and bingo card marking devices, and fifty-fifty raffle systems~~; to ensure that net proceeds are used for educational, charitable, patriotic, fraternal, religious, or public-spirited uses; to protect and promote the public interest; to ensure fair and honest games; to ensure that fees and taxes are paid; and to prevent and detect unlawful gambling activity.

SECTION 4. AMENDMENT. Subsections 2 and 3 of section 53-06.1-03 of the North Dakota Century Code are amended and reenacted as follows:

2. An eligible organization shall apply for a license to conduct only bingo, electronic quick shot bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, or sports pools by:
 - a. First securing approval for a site authorization from the governing body of the city or county in which the proposed site is located. Approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form that is to accompany the license application to the attorney general for final approval. A governing body may not require an eligible organization to donate net proceeds to the city, county, or related political subdivision or for community programs or services within the city or county as a condition for receiving a site authorization from the city or county. A governing body may limit the number of tables for the game of twenty-one per site and the number of sites upon which a licensed organization may conduct games within the city or county. A governing body may charge a one hundred dollar fee for a site authorization; and
 - b. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and remitting a one hundred fifty dollar license fee for each city or county that approves a site authorization. However, the attorney general may allow an organization that only conducts a raffle or calcutta in two or more cities or counties to annually apply for a consolidated license and remit a one hundred fifty dollar license fee for each city or county in which a site is located. An organization shall document that it qualifies as an eligible organization. If an organization amends its primary purpose as stated in its articles of incorporation or materially changes its basic character, the organization shall reapply for licensure.
3. A licensed organization or organization that has a permit shall conduct games as follows:
 - a. Only one licensed organization or organization that has a permit may conduct games at an authorized site on a day, except that a raffle may be conducted for a special occasion by another licensed organization or organization that has a permit when one of these conditions is met:
 - (1) When the area for the raffle is physically separated from the area where games are conducted by the regular organization.
 - (2) Upon request of the regular organization and with the approval of the alcoholic beverage establishment, the regular organization's license or

permit is suspended for that specific time of day by the attorney general.

- b. Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter, a licensed organization may not have more than twenty-five sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver for no more than five sites.
- c. Games of electronic quick shot bingo, pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.
- d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit an individual under eighteen years of age to directly or indirectly play electronic quick shot bingo. An organization may not permit a ~~person~~ an individual under eighteen years of age to directly or indirectly play bingo unless the ~~person~~ individual is accompanied by an adult, bingo is conducted by an organization that has a permit, or the game's prize structure does not exceed that allowed for a permit.

¹⁸³ **SECTION 5. AMENDMENT.** Subsections 1 and 3 of section 53-06.1-06 of the North Dakota Century Code are amended and reenacted as follows:

1. No person, except a member, volunteer, an employee of a licensed organization or an organization that has a permit, or an employee of a temporary employment agency who provides services to a licensed organization, may manage, control, or conduct any game. "Member" includes a member of an auxiliary organization. In conducting pull tabs, ~~or prize boards,~~ or bingo through a dispensing device, selling raffle tickets, or conducting sports pools, the attorney general may allow an employee of an alcoholic beverage establishment to provide limited assistance to an organization.
3. An organization and distributor shall maintain complete, accurate, and legible bank and accounting records in North Dakota for all gaming activity and establish a system of internal control as prescribed by rule. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and use of net proceeds. If an organization does not renew its license or its license is denied, relinquished, or revoked and it has not disbursed all of its net proceeds, the organization shall file an action plan as prescribed by the gaming rules with the attorney general.

SECTION 6. AMENDMENT. Subsection 1 of section 53-06.1-10.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Electronic quick shot bingo is a bingo game played on portable hand-held bingo devices utilizing electronic bingo card images. The maximum sales price

¹⁸³ Section 53-06.1-06 was also amended by section 3 of House Bill No. 1216, chapter 359.

per electronic bingo card is five dollars. The bingo game is played using twenty-four predrawn letters and numbers and may use up to six bonus letters and numbers to achieve predetermined patterns. The letters and numbers may only be drawn by the organization either manually or with the use of a random number generator, once during a business day and before the beginning of any session. It is not required for each bingo game to have a winner. The bingo devices used in conjunction with a site operating system automatically daubs the called letters and numbers via a radio frequency signal or wi-fi transmission on a maximum of sixteen electronic bingo cards for an individual game. The site operating system, including the point-of-sale, allows an employee to deposit credits received from a player by cash, check, or debit card to a temporary credit account to be used by a player for the purchase of electronic bingo cards. The devices may determine a winning bingo and must accumulate the winning prize amounts in a separate winnings account which may only be redeemed by an employee.

¹⁸⁴ **SECTION 7. AMENDMENT.** Subsection 1 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

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. A cash prize paid by check must be paid from a gaming bank account. 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.

¹⁸⁵ **SECTION 8. AMENDMENT.** Subsection 3 of section 53-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 9. AMENDMENT. Subsection 8 of section 53-06.1-15.1 of the North Dakota Century Code is amended and reenacted as follows:

8. Require or authorize an organization to pay or prohibit an organization from paying a bingo, electronic quick shot bingo, or raffle prize to a player on a dispute or based on a factual determination or a hearing by the attorney general.

Approved April 11, 2017

Filed April 12, 2017

¹⁸⁴ Section 53-06.1-11 was also amended by section 4 of House Bill No. 1216, chapter 359.

¹⁸⁵ Section 53-06.1-14 was also amended by section 5 of House Bill No. 1216, chapter 359.

CHAPTER 361

SENATE BILL NO. 2181

(Senators Sorvaag, Burckhard, Meyer)
(Representatives Blum, M. Johnson, Hogan)

AN ACT to amend and reenact section 53-06.1-10.1 of the North Dakota Century Code, relating to conducting a raffle using a random number generator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10.1. Raffles.

1. A prize for a raffle may be cash or merchandise but may not be real estate. No single cash prize may exceed twenty-five thousand dollars and the total cash prizes in one day may not exceed twenty-five thousand dollars. However, on not more than two occasions per year a licensed organization may, at the request of a winning player, exchange a merchandise prize valued at not more than twenty-five thousand dollars for a cash prize.
2. The maximum cash prize limits of this section do not apply to a public-spirited organization that supports amateur collegiate athletics.
3. An organization permitted to conduct raffles in this state may conduct a fifty-fifty raffle either by manual drawing or by using a random number generator. Fifty-fifty raffle tickets must be sold and drawings held onsite at the location of and on the date of the event.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 362

SENATE BILL NO. 2175

(Senators Dever, Clemens, Vedaa, Marcellais)
(Representative Zubke)

AN ACT to amend and reenact section 53-06.1-11.1 of the North Dakota Century Code, relating to eligible uses of net proceeds by licensed gaming organizations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-11.1. Restricted use of money in certain political activities - Eligible uses of net proceeds.

1. A licensed organization or an organization that has a permit may not use money from any source for placing an initiated or referred measure on a ballot or for a political campaign to promote or oppose a person for public office. Except for a use related to an organization's primary purpose, a licensed organization or organization that has a permit may not use net proceeds to influence legislation or promote or oppose referendums or initiatives. Any funds expended by a licensed organization or an organization that has a permit to promote or oppose an initiated or referred measure that is on the ballot or for any activities of a lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a lobbyist, and that are not required to be reported under section 54-05.1-03 must be reported to the attorney general as prescribed by the attorney general. A violation of this subsection subjects an organization to a suspension of its license or permit for up to one year.
2. A licensed organization or an organization that has a charity local permit shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
 - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
 - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.
 - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
 - (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.

- (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
 - (3) Assistance to libraries and museums.
 - (4) Assistance for the performing arts and humanities.
 - (5) Preservation of cultural heritage.
 - (6) Youth community, social welfare, and athletic activities.
 - (7) Adult amateur athletic activities within the state, including team uniforms and equipment.
 - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
 - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Assistance to an individual or family suffering from poverty or homelessness.
 - (2) Encouragement and enhancement of the active participation of the elderly in our society.
 - (3) Services to the abused.
 - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
 - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
 - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
 - (7) Funds for emergency relief and volunteer services.
 - (8) Funds to nonprofit nursing homes, nonprofit day care centers, and nonprofit medical facilities.
 - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.
 - (10) Funds for crime prevention, fire protection and prevention, and public safety.
 - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, and health and welfare of injured or disabled veterans.
- e. Uses that perpetuate the memory and history of the dead.

- f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, ~~not of direct benefit to the eligible organization or any member thereof which include~~ including disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants do not qualify.
- g. The erection or maintenance of public buildings, facilities, utilities, or waterworks.
- h. Uses lessening the burden of government which include disbursements to an entity that is normally funded by a city, county, state, or United States government and disbursements directly to a government entity or its agency.
- i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is not covered by insurance.
- j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is not covered by insurance.
- k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies if it develops or promotes public services, including education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, tourism, and health. Uses that directly benefit a chamber of commerce do not qualify.
- l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
 - (1) Funds for adult bands, including drum and bugle corps.
 - (2) Funds for trade shows and conventions conducted in this state.
 - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife reproduction and habitat enhancement program.
 - (4) Funds for public transportation, community celebration, and recreation.
 - (5) Funds for preservation and cleanup of the environment.
- m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, or are used for a veterans or public cemetery by a veterans organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, the organization may establish a special trust fund or foundation as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.

- n. Uses for a fundraising activity unrelated to an organization's primary purpose provided that the gross revenue from the activity is disbursed to uses prescribed by this subsection.
3. ~~The~~With the exception of a veterans organization, the uses in subsection 2 do not include the erection, acquisition, improvement, maintenance, or repair of real or personal property owned or leased by an organization unless it is used exclusively for an eligible use.
4. A licensed organization or recipient of net proceeds may not use net proceeds for administrative or operating expenses involving the conduct of games.

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

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 363

SENATE BILL NO. 2051

(Government and Veterans Affairs Committee)
(At the request of the Racing Commission)

AN ACT to amend and reenact subsection 6 of section 53-06.2-11 of the North Dakota Century Code, relating to distributions from the breeders' fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

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 in-state awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient. The commission shall distribute out-of-state awards and payment supplements from the breeders' fund, if made available by the commission, within two months of the end of the 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 may receive twenty-five thousand dollars per year or twenty-five percent per year, whichever is greater, from the racing promotion fund for the payment of the commission's operating expenses.

Approved March 13, 2017

Filed March 13, 2017

STATE GOVERNMENT

CHAPTER 364

SENATE BILL NO. 2044

(Legislative Management)
(Political Subdivision Taxation Committee)

AN ACT to create and enact a new section to chapter 6-09 and a new section to chapter 54-03 of the North Dakota Century Code, relating to dynamic fiscal impact analysis of select economic development incentives and bills introduced by the legislative assembly and the creation of a dynamic fiscal impact bill selection committee; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Dynamic fiscal impact analysis.

The Bank of North Dakota shall conduct dynamic revenue analysis of economic development tax incentives selected for review by the interim committee tasked with reviewing economic development tax incentives under section 54-35-26 and bills selected by the dynamic fiscal impact bill selection committee under section 2 of this Act.

SECTION 2. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Dynamic fiscal impact bill selection committee.

1. During the 2019 legislative session, a dynamic fiscal impact bill selection committee must be formed consisting of the following members:
 - a. The majority leader and minority leader of the house of representatives;
 - b. The majority leader and minority leader of the senate;
 - c. The chairman of the legislative management, who shall serve as chairman of the committee;
 - d. The chairman of the house finance and taxation committee; and
 - e. The chairman of the senate finance and taxation committee.
2. The committee shall review bills introduced by the sixty-sixth legislative assembly which have a fiscal impact and forward bills selected for dynamic fiscal impact analysis to the Bank of North Dakota for review pursuant to section 1 of this Act.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2019, and after that date is ineffective.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 365

SENATE BILL NO. 2325

(Senators Poolman, Dever)
(Representatives Meier, Seibel)

AN ACT to create and enact a new subsection to section 54-07-01 of the North Dakota Century Code, relating to collaboration between agencies to coordinate early intervention services; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-07-01 of the North Dakota Century Code is created and enacted as follows:

Shall designate a lead agency to collaborate with other agencies to coordinate early intervention services for children from birth to age three who are at high risk for developmental delay or disability.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - EARLY INTERVENTION SYSTEM. During the 2017-18 interim, the legislative management shall consider studying the state's early intervention system for children from birth to age three with developmental disabilities. The study may include a historical overview of the system, funding mechanisms, including medicaid, the broader implications of how the state's system interfaces with other early childhood systems, and responsibilities for implementing federal law directing states participating in part C of the federal Individuals with Disabilities Education Act to locate and evaluate children from birth to age three. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 366

SENATE BILL NO. 2302

(Senators D. Larson, Cook, Nelson)
(Representatives Beadle, Karls, Roers Jones)

AN ACT to amend and reenact sections 12-60-05 and 12.1-29-07, subsection 1 of section 29-06-05.2, and sections 54-12-01.1 and 54-12-28 of the North Dakota Century Code, relating to appointment of ad hoc special agents, the offender education program, authority for federal law enforcement officers to make arrests, online publication of eminent domain information, and twenty-four seven program records and statistics; to repeal section 19-03.1-44 of the North Dakota Century Code, relating to a drug use status and trends report; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-05 of the North Dakota Century Code is amended and reenacted as follows:

12-60-05. Attorney general - Duties - Appointment of personnel.

The attorney general shall act as superintendent of the bureau and shall have the responsibility of and shall exercise absolute control and management of the bureau. The attorney general shall appoint and fix the salary of a chief of the bureau, such special agents, and such other employees as the attorney general deems necessary to carry out the provisions of this chapter within the limits of legislative appropriations therefor. The attorney general may appoint ad hoc special agents. Ad hoc special agents are law enforcement officers from other jurisdictions appointed for a specific law enforcement purpose and do not become full-time or part-time employees of the attorney general.

SECTION 2. AMENDMENT. Section 12.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-29-07. ~~(Effective January 1, 2016 through July 31, 2017)~~ Offender education program.

A sentence for an offense under section 12.1-29-06 or chapter 12.1-41 may include an order for the offender to participate in an offender education program on the negative consequences of the commercial sex industry, including health and legal consequences and the impact on communities, survivors, spouses, and children. The court may order the offender to pay the cost of the offender education program.

SECTION 3. AMENDMENT. Subsection 1 of section 29-06-05.2 of the North Dakota Century Code is amended and reenacted as follows:

1. "Federal agent" means an employee of the federal bureau of investigation; the federal drug enforcement administration; the bureau of alcohol, tobacco, firearms and explosives; the homeland security investigations unit of the department of homeland security; or the United States customs and border protection who is authorized to arrest, with or without a warrant, any individual

for a violation of the United States Code and carry a firearm in the performance of the employee's duties as a federal law enforcement officer.

SECTION 4. AMENDMENT. Section 54-12-01.1 of the North Dakota Century Code is amended and reenacted as follows:

54-12-01.1. Attorney general to ~~prepare~~publish eminent domain ~~pamphlets~~—Copy to landowner information.

The attorney general, with the cooperation of appropriate state agencies, shall ~~prepare pamphlets in readable format~~publish online information describing the eminent domain laws of this state. The ~~pamphlets~~information must include the reasons for condemnation, the procedures followed by condemnors as defined by section 32-15-01, how citizens may influence the condemnation process, and the rights of property owners and citizens affected by condemnation. ~~The attorney general shall make copies of the pamphlets available to all condemnors who must be charged a price for the pamphlets sufficient to recover the costs of production.~~ A condemnor shall ~~present a copy of the pamphlet to~~notify a property owner ~~prior to~~of the available online information before making an offer to purchase and initiating a condemnation action.

SECTION 5. AMENDMENT. Section 54-12-28 of the North Dakota Century Code is amended and reenacted as follows:

54-12-28. Twenty-four seven sobriety program guidelines ~~and~~, program fees, and records.

1. The attorney general, in cooperation with law enforcement, the judiciary, the department of corrections and rehabilitation, and the traffic safety division of the department of transportation, may develop guidelines, policies, and procedures to administer the twenty-four seven sobriety program and to test offenders to enforce compliance with the sobriety program, including sobriety testing twice per day seven days per week, electronic monitoring, including home surveillance and remote electronic alcohol monitoring, urine testing and drug patch testing, and to establish program fees, all of which are not subject to chapter 28-32.
2. To assist in monitoring the status of the twenty-four seven sobriety program, the attorney general may gather program records and statistics. Agencies or companies participating in the twenty-four seven program shall provide record and statistic information requested by the attorney general within thirty days of the request.

SECTION 6. REPEAL. Section 19-03.1-44 of the North Dakota Century Code is repealed.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 23, 2017

Filed February 23, 2017

CHAPTER 367

SENATE BILL NO. 2290

(Senators Luick, Nelson)
(Representatives Maragos, Hanson)

AN ACT to amend and reenact section 54-12-33 of the North Dakota Century Code, relating to the authority of the human trafficking commission; and to provide for a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-12-33 of the North Dakota Century Code is amended and reenacted as follows:

54-12-33. Human trafficking commission.

1. The attorney general may establish a human trafficking commission, comprised of designees from state, local, and tribal agencies which have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the commission. The attorney general may establish the commission by appointing an existing statewide coalition.
2. The commission shall:
 - a. ~~Develop a coordinated and comprehensive plan to provide victims with services;~~
 - b. Collect and evaluate data on human trafficking in this state and submit an annual report to the attorney general, governor, and legislature~~legislative assembly~~;
 - e-b. Promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;
 - d. ~~Create a public awareness sign that contains the national human trafficking resource center hotline information, and any state or local hotlines that the coalition deems appropriate;~~
 - e. ~~Coordinate~~
 - c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;
 - f. ~~Coordinate~~
 - d. Promote training on human trafficking investigation and prosecution with the North Dakota state's attorney's association, the North Dakota peace

officers standards and training board, and state and local law enforcement agencies; and

~~g-e.~~ Conduct other appropriate activities.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 368

SENATE BILL NO. 2272

(Senators Schaible, Rust)
(Representatives Monson, Nathe, Owens)

AN ACT to create and enact a new section to chapter 54-27 of the North Dakota Century Code, relating to definitions for the foundation aid stabilization fund; to amend and reenact sections 15.1-36-01, 15.1-36-02, 15.1-36-06, and 15.1-36-08, subsection 7 of section 21-03-07, section 54-44.1-12, and subsection 1 of section 57-62-02 of the North Dakota Century Code, relating to school construction loans from the coal development trust fund and the school construction assistance revolving loan fund, control of the rate of expenditures, and the transfer of interest from the coal development trust fund; to repeal sections 9 and 10 of chapter 153 of the 2015 Session Laws and sections 15-10-60, 15.1-27-46, 15.1-36-02.1, 15.1-36-03, 15.1-36-06, and 15.1-36-07 of the North Dakota Century Code, relating to the scholarship endowment fund, the uses of the foundation aid stabilization fund, and school construction loans; to provide an expiration date; to provide contingent transfers; to provide transfers; to provide an appropriation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-36-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-36-01. School construction projects - Approval.

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of one hundred fifty 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;
 - b. (1) Demonstrates that the student population has been stable or has increased during the preceding five school years and is expected to be stable or to increase during the ensuing five school years; or
(2) Demonstrates by clear and convincing evidence that, despite a declining student population, there are no feasible alternatives to the proposed project; 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 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. 701e-3 or in accordance with moneys received under the American Recovery and Reinvestment Act of 2009.
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 15.1-36-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-36-02. Coal development trust fund - Board of university and school lands - School construction projects - Unanticipated construction projects and emergency repairs - Loans.

1. ~~In order to provide school construction loans, the board of university and school lands may authorize the use of:~~
 - a. ~~Fifty million dollars, or so much of that amount as may be necessary, from 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; and~~
 - b. ~~One hundred fifty million dollars from the strategic investment and improvements fund, established pursuant to section 15-08-1-08, for the period ending June 30, 2015. Up to sixty million dollars from the coal development trust fund is available to the board of university and school lands for loans under this section.~~
2. ~~In order to~~To be eligible for a loan under this section, the school district must demonstrate a need based on an unanticipated construction project, an unanticipated replacement project, or an emergency repair, and 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
 - e-b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. ~~If an eligible school district's taxable valuation per student is less than eighty percent of the state average taxable valuation per student, the district is entitled to receive:~~
 - a. ~~A school construction loan equal to the lesser of twenty million dollars or ninety percent of the actual project cost;~~
 - b. ~~An interest rate discount equal to at least one hundred but not more than four hundred basis points below the prevailing tax-free bond rates; and~~
 - c. ~~A term of repayment that may extend up to twenty years.~~
4. ~~If an eligible school district's taxable valuation per student is equal to at least eighty percent but less than ninety percent of the state average taxable valuation per student, the district is entitled to receive:~~
 - a. ~~A school construction loan equal to the lesser of fifteen million dollars or eighty percent of the actual project cost;~~
 - b. ~~An interest rate buydown equal to at least one hundred but not more than three 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 taxable valuation per student is equal to at least ninety percent of the state average taxable valuation per student, the district is entitled to receive:~~
 - a. ~~A school construction loan equal to the lesser of ten million dollars or seventy percent of the actual project cost;~~
 - b. ~~An interest rate discount equal to at least one hundred but not more than three hundred basis points below the prevailing tax-free bond rates; and~~
 - c. ~~A term of repayment that may extend up to twenty years.~~
6. ~~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.~~
7. The superintendent of public instruction shall consider each loan application in the order it received approval under section 15.1-36-01.

~~8-4.~~ 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. A school district's interest rate may not be less than one percent, regardless of any rate discount for which the district might otherwise qualify under this section. the board of university and school lands shall issue a loan from the coal development trust fund. For a loan made under this section:

- a. The minimum loan amount is two hundred fifty thousand dollars and the maximum loan amount for which a school district may qualify is two million dollars;
- b. The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
- c. The interest rate of the loan may not exceed two percent per year.

~~9-5.~~ a. If a school district seeking a loan under this section received an allocation of the oil and gas gross production tax during the previous fiscal year in accordance with chapter 57-51, the board of the district shall provide to the board of university and school lands, and to the state treasurer, its evidence of indebtedness indicating that the loan originated under this section.

b. If the evidence of indebtedness is payable solely from the school district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.

c. If a loan made to a school district is payable solely from the district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the terms of the loan must require that the state treasurer withhold the dollar amount or percentage specified in the loan agreement, from each of the district's oil and gas gross production tax allocations, in order to repay the principal and interest of the evidence of indebtedness. The state treasurer shall deposit the amount withheld into the fund from which the loan originated.

d. Any evidence of indebtedness executed by the board of a school district under this subsection is a negotiable instrument and not subject to taxation by the state or any political subdivision of the state.

~~10-6.~~ 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.

¹⁸⁶ **SECTION 3. AMENDMENT.** Section 15.1-36-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-36-06. School construction loans - Bank of North Dakota.

- 1. In addition to any construction loans made available under section 15.1-36-02, the Bank of North Dakota may provide up to two hundred fifty million dollars to

¹⁸⁶ Section 15.1-36-06 was repealed by section 10 of Senate Bill No. 2272, chapter 368.

eligible school districts for school construction loans, except that the total of all loans provided under this section during the first year of the 2015-17 biennium may not exceed fifty percent of the total amount authorized under this subsection until June 30, 2017. After June 30, 2017, no new loans may be provided under this section.

2. To be eligible for a loan under this section, the board of a school district shall:
 - a. Propose a new construction or remodeling 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 project under section 15.1-36-01;
 - c.
 - (1) Request from the tax commissioner a statement of the estimated tax increase, in mills and dollars, which would be applicable to a residential parcel of average true and full value within the county in which the school district is headquartered, if a loan under this section and any associated school construction bond issue were to be authorized in accordance with chapter 21-03;
 - (2) Request from the tax commissioner a statement of the estimated tax increase, in mills and dollars, which would be applicable to an acre of cropland and to an acre of noncropland, of average true and full value within the county in which the school district is headquartered, if a loan under this section and any associated school construction bond issue were to be authorized in accordance with chapter 21-03;
 - (3) Publish in the official newspaper of the district the information from the statements required by this subdivision with the notice of the election to authorize the school construction bond issuance in accordance with section 21-03-12; and
 - (4) Post on the school district's website the information from the statements preceding the date of the election to authorize the school construction bond issuance in accordance with chapter 21-03;
 - d. Receive authorization for a bond issue in accordance with chapter 21-03; and
 - e. Submit a completed application to the Bank of North Dakota.
3. With the advice and consent of the superintendent of public instruction, the Bank of North Dakota shall award the loans in accordance with a prioritization system that is based on a review of all applications filed during the twelve-month period preceding April first and gives consideration to:
 - a. Student occupancy and academic needs in the district;
 - b. The age of existing structures to be replaced or remodeled;
 - c. Building design proposals that are based on safety and vulnerability assessments;
 - d. Community support;

- e. Cost; and
 - f. Any other criteria established in rule by the superintendent of public instruction, after consultation with an interim committee appointed by the legislative management.
4. The term of a loan under this section is twenty years, unless a shorter term is requested by the board of a school district in its application.
 5. The interest rate on a loan under this section may not exceed two percent, until July 1, 2025. Thereafter, the interest rate on the remainder of a loan under this section:
 - a. May not exceed the Bank of North Dakota's base rate; or
 - b. May be a fixed rate.
 6. If a school district's unobligated general fund balance on the preceding June thirtieth exceeds the limitation set forth under section 15.1-27-35.3, the loan amount to which that district is entitled under this section may not exceed eighty percent of the project's cost.
 7. The maximum loan amount to which a school district is entitled under this section is twenty million dollars.

SECTION 4. AMENDMENT. Section 15.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

15.1-36-08. School construction assistance revolving loan fund - Bank of North Dakota - School construction projects - Continuing appropriation.

1. The school construction assistance revolving loan fund is a special revolving loan fund ~~in the state treasury administered by the Bank of North Dakota.~~ The fund consists of:
 - a. ~~All~~ all moneys appropriated or transferred to the fund by the legislative assembly;
 - b. ~~One hundred fifty million dollars from the strategic investment and improvements fund, which had been allocated by the sixty-third legislative assembly for school construction loans in accordance with section 15.1-36-02;~~ and
 - c. ~~All~~ all interest or other earnings of the fund, and all repayments of loans made from the fund.
2. Moneys in the fund, interest upon the moneys in the fund, and payments to the fund of principal and interest are appropriated to the Bank of North Dakota on a continuing basis for the purpose of providing low-interest school construction loans and for paying administrative costs, in accordance with this ~~chapter~~section.
3. To be eligible for a loan under this section, the board of a school district shall:
 - a. Propose a new construction or remodeling 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 project under section 15.1-36-01;
 - c. (1) Publish in the official newspaper of the district the information regarding the proposed estimated additional millage and the dollar increase per one thousand dollars of taxable valuation in accordance with section 21-03-13 along with the notice of the election to authorize the school construction bond issuance in accordance with section 21-03-12; and
 - (2) Post the information on the school district's website preceding the date of the election to authorize the school construction bond issuance in accordance with chapter 21-03;
 - d. Receive authorization for a bond issue in accordance with chapter 21-03; and
 - e. Submit a completed application to the Bank of North Dakota.
4. The superintendent of public instruction shall review loan applications based on a prioritization system that includes a review of all applications filed during the twelve-month period preceding April first and gives consideration to:
- a. Student occupancy and academic needs in the district;
 - b. The age of existing structures to be replaced or remodeled;
 - c. Building design proposals that are based on safety and vulnerability assessments;
 - d. Community support;
 - e. Cost; and
 - f. Any other criteria established by the superintendent of public instruction, after consultation with an interim committee appointed by the legislative management.
5. If the superintendent of public instruction approves the loan, the Bank of North Dakota shall issue a loan from the school construction assistance revolving loan fund. For a loan made under this section:
- a. The maximum loan amount for which a school district may qualify is ten million dollars. However, if a school district's unobligated general fund balance on the preceding June thirtieth exceeds the limitation under section 15.1-27-35.3, the loan amount under this section may not exceed eighty percent of the project's cost up to a maximum loan amount of eight million dollars;
 - b. The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
 - c. The interest rate of the loan may not exceed two percent per year.

6. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with this section. The Bank of North Dakota may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administration costs which may not exceed one-half of one percent of the amount of the interest payment. The Bank of North Dakota shall deposit principal and interest payments made by school districts for loans under this section in the school construction assistance revolving loan fund. The Bank of North Dakota shall arrange for the conduct of an annual audit of the school construction assistance revolving loan fund, the cost of which must be paid from the fund and which must be conducted by an independent accounting firm.

SECTION 5. AMENDMENT. Subsection 7 of section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47, 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings or for the construction or improvement of a project under section 15.1-36-02 or ~~15.1-36-03~~15.1-36-08. The initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

¹⁸⁷ **SECTION 6. AMENDMENT.** Section 54-44.1-12 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-12. Control over rate of expenditures.

1. The director of the budget shall exercise continual control over the execution of the budget affecting the departments and agencies of state government, with the exception of the legislative and judicial branches. Execution means the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of allotments. The allotment must be made by specific fund and all departments and agencies that receive moneys from that fund must be allotted on a uniform percentage basis, except that general fund appropriations to the department of public instruction for state school aid, transportation aid, and special education aid and general fund appropriations to the department of career and technical education for grants to school districts may ~~only~~ be allotted only to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund as follows:

¹⁸⁷ Section 54-44.1-12 was also amended by section 3 of House Bill No. 1155, chapter 394.

- a. The first two and one-half percent allotment from the general fund must be offset with a transfer from the foundation aid stabilization fund.
 - b. Any general fund allotment in excess of two and one-half percent that is necessary, after all moneys available in the budget stabilization fund have been transferred to the general fund under section 54-27.2-03, may be offset with a transfer from the foundation aid stabilization fund.
2. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director shall find one or more of the following circumstances to exist:
- a. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
 - b. The payment or the obligation incurred is not authorized by law.
 - c. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, including:
 - (1) Statements of legislative intent expressed in enacted appropriation measures or other measures enacted by the legislative assembly; and
 - (2) Statements of purpose of amendment explaining amendments to enacted appropriation measures, as recorded in the journals of the legislative assembly.
 - d. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

SECTION 7. A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

Definitions for the foundation aid stabilization fund - Uses of the foundation aid stabilization fund.

1. For the purposes of section 24 of article X of the Constitution of North Dakota:
 - a. "Education-related purposes" means purposes related to public elementary and secondary education.
 - b. "State aid to school districts" means:
 - (1) The general fund appropriations to the department of public instruction for state school aid, transportation aid, and special education aid; and
 - (2) The general fund appropriations to the department of career and technical education for grants to school districts and area centers.
2. Any accessible funds in the foundation aid stabilization fund, exceeding the required reserves under section 24 of article X of the Constitution of North Dakota, may be used only for education-related purposes, including state aid

to school districts, career and technical education grants to school districts and area centers, and education-related property tax relief.

188 SECTION 8. AMENDMENT. Subsection 1 of section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Thirty percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal-impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter 15.1-36. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the ~~school construction assistance loan~~ general fund. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15.1-36.

SECTION 9. REPEAL. Sections 9 and 10 of chapter 153 of the 2015 Session Laws and sections 15-10-60, 15.1-27-46, 15.1-36-02.1, 15.1-36-03, and 15.1-36-07 of the North Dakota Century Code are repealed.

189 SECTION 10. REPEAL. Section 15.1-36-06 of the North Dakota Century Code is repealed.

SECTION 11. CONTINGENT TRANSFERS - SCHOOL CONSTRUCTION ASSISTANCE LOAN FUND TO FOUNDATION AID STABILIZATION FUND - SCHOLARSHIP ENDOWMENT FUND TO FOUNDATION AID STABILIZATION FUND. If the office of management and budget transfers any amounts from the foundation aid stabilization fund to the school construction loan assistance fund or the scholarship endowment fund between December 1, 2016, and the effective date of this Act related to sections 9 and 10 of chapter 153 of the 2015 Session Laws, the office of management and budget shall transfer the amounts back to the foundation aid stabilization fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

SECTION 12. CONTINGENT TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO SCHOOL CONSTRUCTION ASSISTANCE REVOLVING LOAN FUND. If the board of university and school lands has not transferred the \$150,000,000 referenced in subdivision b of subsection 1 of section 15.1-36-08 as in effect on January 1, 2017, from the strategic investment and improvements fund to the school construction assistance revolving loan fund, the

¹⁸⁸ Section 57-62-02 was also amended by section 4 of House Bill No. 1005, chapter 4, section 21 of Senate Bill No. 2014, chapter 39, and section 1 of Senate Bill No. 2101, chapter 403.

¹⁸⁹ Section 15.1-36-06 was amended by section 3 of Senate Bill No. 2272, chapter 368.

board of university and school lands shall transfer \$150,000,000, including any outstanding loans and cash issued pursuant to subdivision b of subsection 1 of section 15.1-36-02 as in effect on January 1, 2017, to the school construction assistance revolving loan fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

SECTION 13. TRANSFER - FOUNDATION AID STABILIZATION FUND TO SCHOOL CONSTRUCTION ASSISTANCE REVOLVING LOAN FUND. The office of management and budget shall transfer the sum of \$75,000,000 from the foundation aid stabilization fund to the school construction assistance revolving loan fund during the period beginning with the effective date of this Act, and ending June 30, 2019. Of the \$75,000,000 transferred to the school construction assistance revolving loan fund, up to \$50,000,000 must be used to repay the Bank of North Dakota for the outstanding principal balance on a portion of the loans issued under section 15.1-36-06 for the purpose of transferring a portion of the loans issued under section 15.1-36-06 from the Bank of North Dakota to the school construction assistance revolving loan fund. The remaining amount transferred to the school construction assistance revolving loan fund is available for new school construction loans.

SECTION 14. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - FOUNDATION AID STABILIZATION FUND - ONE-TIME FUNDING. There is appropriated out of any moneys in the foundation aid stabilization fund in the state treasury, not otherwise appropriated, the sum of \$6,000,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of providing rapid enrollment grants to school districts, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item. The superintendent of public instruction shall award rapid enrollment grants to eligible districts based on the following criteria:

1. A district is eligible to receive a grant under this section if the number of students reflected in the district's September tenth enrollment report exceeds the number of students in the prior year September tenth enrollment report. The increase must be at least four percent or one hundred fifty students and must be at least twenty students.
2. The superintendent of public instruction shall calculate the amount to which an eligible district is entitled as follows:
 - a. Determine the actual percentage increase in the number of students and subtract two from the percentage calculated;
 - b. Determine the number of students represented by the difference determined in subdivision a of this subsection;
 - c. Multiply the number of students determined in subdivision b of this subsection by \$4,000.
3. If the amount of the appropriation provided for in this section is insufficient to meet the obligations of this subsection, the superintendent of public instruction shall prorate the payment based on the percentage of the total amount to which each school district is entitled.
4. The superintendent of public instruction may not expend more than fifty percent of the funds available under this section during the first year of the biennium.

5. 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 15. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - FOUNDATION AID STABILIZATION FUND - ONE-TIME FUNDING. There is appropriated out of any moneys in the foundation aid stabilization fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of providing English language learner grants to school districts, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item. The superintendent of public instruction shall award grants to the four school districts that serve the largest number of first, second, and third level English language learners in kindergarten through grade twelve based on the following criteria:

1. The WIDA test.
2. To determine the amount that a school district may receive under this subsection, the superintendent of public instruction shall provide a pro rata share of the available grant dollars to each eligible district based upon the total number of first, second, and third level English language learners enrolled in the four districts.
3. A district may expend moneys received under this section only for the purpose of enhancing services to first, second, and third level English language learners. Permissible purposes include the hiring of additional teachers, interpreters, and social workers for first and second level English language learners and the provision of other ancillary support services and programs, approved by the superintendent of public instruction.
4. The superintendent of public instruction may not award more than fifty percent of the funds available under this section during the first year of the biennium.

SECTION 16. EFFECTIVE DATE. Section 10 of this Act becomes effective July 1, 2023.

SECTION 17. EMERGENCY. Sections 4, 5, 8, 9, 11, and 12 of this Act are declared to be an emergency measure.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 369

SENATE BILL NO. 2135

(Senators Hogue, Klein, Wardner)
(Representatives Carlson, K. Koppelman, Vigesaa)

AN ACT to provide for the creation of an initiated and referred measure study commission; to provide for a report to the legislative management; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. INITIATED AND REFERRED MEASURE STUDY COMMISSION - DUTIES - MEMBERSHIP - REPORT TO LEGISLATIVE MANAGEMENT.

1. During the 2017-18 interim, an initiated and referred measure study commission shall undertake a comprehensive study of the initiated and referred measure laws of North Dakota. The commission shall study, among other subjects:
 - a. The process and cost of placing initiated and referred measures on the ballot and campaigning in support of or opposition to ballot measures in North Dakota;
 - b. The processes used to place initiated and referred measures on the ballot in other states;
 - c. Whether any provision of the state constitution or state law relating to initiated or referred measures should be amended. If an amendment is warranted, the commission shall prepare a draft resolution to amend the constitution or a draft bill to amend the state law for consideration by the next legislative assembly; and
 - d. The effect of out-of-state funding on the initiated and referred measure process and whether limits on out-of-state funding are necessary.
2. The commission shall hold at least four meetings and report its findings and any recommendations, together with any legislation required to implement the recommendations, to the legislative management before September 1, 2018.
3. The commission must consist of:
 - a. One individual appointed by the chief justice of the supreme court, who shall serve as the commission chairman;
 - b. Three members of the house of representatives appointed by the majority leader of the house of representatives, and three members of the senate, one of whom must be a member of the minority party, appointed by the majority leader of the senate;
 - c. One individual appointed as a nonvoting member by the secretary of state;

- d. Seven citizen members appointed by the governor, who shall provide public notice of available citizen positions on the commission and establish a procedure for submission of applications. One of the seven must be a member of an association that represents employees and their interests;
 - e. One individual appointed by the greater North Dakota chamber;
 - f. One individual appointed by the North Dakota newspaper association;
 - g. One individual appointed by the North Dakota farm bureau; and
 - h. One individual appointed by the North Dakota farmers union.
4. A citizen member appointed to the commission by the governor may not be an elected or appointed official, a board member or employee of an organization identified in subdivisions e through h of subsection 3, or an employee of the governor's office.
 5. The chairman of the legislative management committee may fill any vacancy on the commission. A vacancy must be filled by an individual who satisfies the criterion for the vacant position, such that the requirements in subsection 3 are met throughout the existence of the commission.
 6. The commission may request appropriate staff services from the legislative council.
 7. Commission members are entitled to mileage and expenses as provided by law for state officers and employees. Commission members who are members of the legislative assembly also are entitled to compensation for attendance at commission meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings. The expenses of the commission are to be paid by the the legislative council.
 8. All appointments of commission members must be completed within sixty days after the effective date of this Act.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 2019, and after that date is ineffective.

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

Approved April 19, 2017

Filed April 20, 2017

CHAPTER 370**SENATE BILL NO. 2230**

(Senator O. Larsen)
(Representative Keiser)

AN ACT to provide for a legislative management study of hybrid long-term care partnership plan insurance coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - HYBRID LONG-TERM CARE PARTNERSHIP PLAN INSURANCE COVERAGE. During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of providing an income tax credit to individuals for premiums for hybrid long-term care partnership plan insurance coverage and the feasibility and desirability of incentivizing asset protection that may be equal to the amount paid out by the hybrid long-term care partnership plan. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 371

SENATE BILL NO. 2245

(Senators Dotzenrod, Luick, Wanzek)
(Representatives D. Anderson, J. Nelson, Mitskog)

AN ACT to provide for a legislative management study to examine the desirability and feasibility of creating a state wetlands bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE WETLANDS BANK. During the 2017-18 interim, the legislative management shall consider studying the desirability and feasibility of creating a state wetlands bank. The study must include consultation with stakeholders to examine land parcels under the control and management of the state which are suitable for wetlands mitigation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 372

SENATE BILL NO. 2053

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

AN ACT to amend and reenact subsection 4 of section 39-03.1-11.2, section 54-52-01, subsections 3 and 4 of section 54-52-17, subsection 4 of section 54-52-28, section 54-52.1-03, subsection 1 of section 54-52.1-03.3, section 54-52.1-03.4, subsection 2 of section 54-52.1-18, section 54-52.6-06, and subsection 2 of section 54-52.6-09 of the North Dakota Century Code, relating to the definitions of retirement and retirement board, eligibility for disability retirement and early retirement benefits under the public employees retirement system, employee enrollment, billing for the retiree health insurance credit, temporary employee participation in the uniform group insurance program failure to maintain a health savings account when the high-deductible health plan is elected, payment of administrative expenses of the defined contribution plan, penalties for employers failing to pay contributions under the defined contribution plan, to provide a contingent effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

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. For purposes of this section, "distributee" includes a beneficiary, other than a spouse, of a deceased member, provided however, in the case of a beneficiary other than a spouse, the direct rollover may be made only to an individual retirement account or individual retirement annuity described in section 408 or 408A of the Internal Revenue Code which is established on behalf of the beneficiary and will be treated as an inherited individual retirement account or individual retirement annuity under section 402(c)(11) of the Internal Revenue Code.

¹⁹⁰ **SECTION 2. AMENDMENT.** Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. (Effective through July 31, 2017) Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.

¹⁹⁰ Section 54-52-01 was also amended by section 12 of House Bill No. 1043, chapter 57, and section 1 of House Bill No. 1148, chapter 379.

2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include state employees who elect to become members of the retirement plan established under chapter 54-52.6.
5. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.
6. "Employer" means a governmental unit.
7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.
8. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.
9. "National guard security officer or firefighter" means a participating member who is:
 - a. A security police employee of the North Dakota national guard; or
 - b. A firefighter employee of the North Dakota national guard.
10. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.
11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are

ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

12. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.
13. "Prior service" means service or employment prior to July 1, 1966.
14. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.
15. "Public employees retirement system" means the retirement plan and program established by this chapter.
16. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.
17. "Retirement board" or "board" means the governing authority created under section 54-52-03.
18. "Seasonal employee" means a participating member who does not work twelve months a year.
19. "Service" means employment on or after July 1, 1966.
20. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.
21. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.
22. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter 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, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

(Effective after July 31, 2017) Definition of terms. As used in this chapter, unless the context otherwise requires:

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of

- the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
 3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
 4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include nonclassified state employees who elect to become members of the retirement plan established under chapter 54-52.6 but does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board.
 5. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.
 6. "Employer" means a governmental unit.
 7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.
 8. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.
 9. "National guard security officer or firefighter" means a participating member who is:
 - a. A security police employee of the North Dakota national guard; or
 - b. A firefighter employee of the North Dakota national guard.
 10. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.
 11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding

subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

12. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.
13. "Prior service" means service or employment prior to July 1, 1966.
14. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.
15. "Public employees retirement system" means the retirement plan and program established by this chapter.
16. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan ~~and meeting the normal retirement date.~~
17. "Retirement board" or "board" means ~~the seven persons designated by this chapter as the governing authority for the retirement system created under section 54-52-03.~~
18. "Seasonal employee" means a participating member who does not work twelve months a year.
19. "Service" means employment on or after July 1, 1966.
20. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.
21. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.
22. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter 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, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

¹⁹¹ **SECTION 3. AMENDMENT.** Subsections 3 and 4 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 members first enrolled after December 31, 2015, except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, 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 ninety and the member attains a minimum age of sixty and has not received a retirement benefit under this chapter.
 - c. Normal retirement date for a national guard security officer or firefighter is:
 - (1) 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 eligible years of employment; or
 - (2) When the national guard security officer or firefighter 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 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 eligible years of employment; 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.
 - e. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:

¹⁹¹ Section 54-52-17 was also amended by section 4 of House Bill No. 1148, chapter 379.

- (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 eligible years of employment; 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.
- f. 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.
- g. 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.
- h. 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.
- (1) A member is eligible to receive disability retirement benefits only if the member:
 - (1) ~~Became~~ became disabled during the period of eligible employment; and
 - (2) ~~Applies~~ applies for disability retirement benefits within twelve months of the date the member terminates employment.
 - (2) 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 ~~if the board~~ if the board deems necessary and these payments are appropriated from the

retirement fund for those purposes. A member's receipt of disability benefits under this section is limited to receipt from the fund to which the member was actively contributing at the time the member became disabled.

4. The board shall calculate retirement benefits as follows:
 - a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:
 - (1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.
 - b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:
 - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
 - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
 - c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.
 - d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning ~~prior to~~before the normal retirement date, ~~which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five as determined under subsection 3.~~ Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, early retirement benefits for members first enrolled after December 31, 2015, are calculated for single life benefits accrued to the date of termination of employment, but must be reduced by fixed rate of eight percent per year to account for benefit payments beginning before the normal retirement date. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.

- e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workforce safety and insurance benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.

SECTION 4. AMENDMENT. Subsection 4 of section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

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. For purposes of this section, "distributee" includes a beneficiary, other than a spouse, of a deceased member, provided however, in the case of a beneficiary other than a spouse, the direct rollover may be made only to an individual retirement account or individual retirement annuity described in section 408 or 408A of the Internal Revenue Code which is established on behalf of the beneficiary and will be treated as an inherited individual retirement account or individual retirement annuity under section 402(c)(11) of the Internal Revenue Code.

SECTION 5. AMENDMENT. Section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03. Employee participation in plan - Employee to furnish information - Benefits to continue upon retirement or termination.

1. Any eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department. If an eligible employee does not enroll in the uniform group insurance program at the time of beginning employment, in order to enroll at a later time the eligible employee must meet minimum requirements established by the board. An employing department may not require an active eligible employee to request coverage under the uniform group insurance program as a prerequisite to receive the minimum employer-paid life insurance benefits coverage or employee assistance program benefits coverage.
2. ~~Within five days after the expiration of the payroll period during which enrollment was requested, the employing department shall enroll the employee with the board. The employee's insurance coverage becomes effective on the date of enrollment.~~
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.

- 4-3. Upon the termination of employment when the employee is not eligible to participate under subsection 32 or 54 or applicable federal law, that employee cannot continue as a member of the uniform group.
- 5-4. A member or former member of the legislative assembly or that ~~person's individual's~~ surviving spouse may elect to continue membership in the uniform group within the applicable time limitations after either termination of eligible employment as a member of the legislative assembly or termination of other eligible employment or, for a surviving spouse, upon the death of the member or former member of the legislative assembly. The member or former member of the legislative assembly or that ~~person's individual's~~ surviving spouse shall pay the premiums in effect for the coverage provided directly to the board.
- 6-5. Each eligible employee requesting enrollment shall furnish the appropriate ~~person individual~~ in the employing department, board, or agency with such information and in such form as prescribed by the board to enable the enrollment of the employee, or employee and dependents, in the uniform group insurance program created by this chapter.
- 7-6. If the participating employee is a faculty member in a state charitable, penal, or educational institution who receives a salary or wages on less than a twelve-month basis and has signed a contract to teach for the next ensuing school year, the agency shall make arrangements to include that employee in the insurance program on a twelve-month basis and make the contribution authorized by this section for each month of the twelve-month period.

SECTION 6. AMENDMENT. Subsection 1 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The following ~~persons individuals~~ are entitled to receive credit for hospital and medical benefits coverage and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program under subsection 2:
 - a. A member or surviving spouse of the highway patrolmen's retirement system is eligible for the credit beginning on the date retirement benefits are effective ~~unless the premium is billed to the employer.~~
 - b. A member or surviving spouse of the public employees retirement system is eligible for the credit beginning on the date retirement benefits are effective ~~unless the premium is billed to the employer.~~

- c. A member or surviving spouse of the retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits is eligible for the credit beginning on the date retirement benefits are effective ~~unless the premium is billed to the employer.~~
- d. A retired judge or surviving spouse receiving retirement benefits under the retirement program established under chapter 27-17 is eligible for the credit beginning on the date retirement benefits are effective ~~unless the premium is billed to the employer.~~
- e. A former participating member of the defined contribution retirement plan receiving retirement benefits, or the surviving spouse of a former participating member of that retirement plan who was eligible to receive or was receiving benefits, under section 54-52.6-13, is eligible as determined by the board pursuant to its rules.

SECTION 7. AMENDMENT. Section 54-52.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.4. Temporary employees and employees on unpaid leave of absence.

1. A temporary employee employed before August 1, 2007, may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements of the program if such election is made before January 1, 2015, and if the temporary employee is participating in the uniform group insurance program on January 1, 2015.
2. In order for a temporary employee employed after July 31, 2007, to qualify to participate in the uniform group insurance program, the employee must be employed at least twenty hours per week; must be employed at least twenty weeks each year of employment; must make the election to participate before January 1, 2015; and must be participating in the uniform group insurance program as of January 1, 2015. ~~To be eligible to participate in the uniform group insurance program;~~
3. A temporary employee first employed after December 31, 2014, or any temporary employee employed before the effective date of this section of this Act but not participating in the uniform group insurance program as of January 1, 2015, must meet the definition of a full-time employee under section 4980H(c)(4) of the Internal Revenue Code [26 U.S.C. 4980H(c)(4)] on the effective date of this section of this Act, does not qualify to participate in the uniform group insurance program, unless the employee is employed at least thirty hours per week for at least twenty weeks each year of employment. Notwithstanding contrary provisions of this subsection, a temporary employee participating in the uniform group insurance program on the effective date of this section of this Act remains eligible through the end of the calendar year during which the effective date of this section of this Act occurs and after that calendar year the temporary employee is subject to the eligibility provisions of subsection 1, 2, or 3, as applicable.
4. Monthly, the temporary employee or the temporary employee's employer shall pay to the board the premiums in effect for the coverage being provided. ~~In the case of a temporary employee who is an applicable taxpayer as defined in section 36B(c)(1)(A) of the Internal Revenue Code [26 U.S.C. 36B(c)(1)(A)],~~

~~the temporary employee's required contribution for medical and hospital benefits self-only coverage may not exceed the maximum employee required contribution specified under section 36B(c)(2)(C) of the Internal Revenue Code [26 U.S.C. 36B(c)(2)(C)], and the employer shall pay any difference between the maximum employee required contribution for medical and hospital benefits self-only coverage and the cost of the premiums in effect for this coverage. An employer may pay health or life insurance premiums for a permanent employee on an unpaid leave of absence. A political subdivision, department, board, or agency may make a contribution for coverage under this section.~~

SECTION 8. AMENDMENT. Subsection 2 of section 54-52.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. Health savings account fees for participating state employees must be paid by the employer.
 - a. Except as provided in subdivision b, subject to the limits of section 223(b) of the Internal Revenue Code [26 U.S.C. 223(b)], 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.
 - b. If the public employees retirement system is unable to establish a health savings account due to the employee's ineligibility under federal or state law or due to failure of the employee to provide necessary information in order to establish the account, the system is not responsible for depositing the health savings account contribution. The member will remain a participant in the high-deductible health plan regardless of whether a health savings account is established.
 - c. If a member closes the health savings account established for that member under this section, the system is not responsible for depositing the health savings account contribution after that closure.

SECTION 9. AMENDMENT. Section 54-52.6-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-06. Administrative expenses - Continuing appropriation.

~~The participating members shall pay the administrative expenses of the plan must be paid by the participating members in a manner determined by the board. The board, or vendors contracted for by the board, may charge reasonable administrative expenses and deduct those expenses from a participating member's account in the defined contribution retirement plan established under this chapter. The board may also pay the administrative expenses of the plan from fines and fees collected from vendors in a manner determined by the board. The board shall place vendor fines and fees and any money deducted from participating members' accounts in an administrative expenses account with the state treasurer. The board may also use funds from the payroll clearing account established pursuant to section 54-52.3-03 to pay for consulting expenses. All moneys in the payroll clearing account, not otherwise appropriated, or so much of the moneys as may be necessary, are appropriated to the board on a continuing basis for the purpose of retaining a consultant as required for the administration of this chapter.~~

SECTION 10. AMENDMENT. Subsection 2 of section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. 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 Monthly, the employer shall pay monthly such contribution into the participating member's account from ~~the employer's~~ funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, ~~the employer~~ is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

SECTION 11. CONTINGENT EFFECTIVE DATE - EXPIRATION DATE. Section 7 of this Act becomes effective on the date identified by the executive director of the public employees retirement system in a certification to the legislative council as the effective date of a repeal of sections 4980H(a) and 4980H(b) of the Internal Revenue Code [26 U.S.C. 4980H(a) and 490H(b)] or the effective date of an amendment of sections 4980H(a) and 4980H(b) of the Internal Revenue Code [26 U.S.C. 4980H(a) and 490H(b)] resulting in the assessable payments under sections 4980H(a) and 4980H(b) [26 U.S.C. 4980H(a) and 490H(b)] becoming zero dollars. If this certification does not occur before August 1, 2019, Section 7 of this Act expires and is ineffective.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 373

SENATE BILL NO. 2032

(Legislative Management)
(Government Finance Committee)

AN ACT to amend and reenact subsection 10 of section 4-05.1-19, section 54-59-19, and subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to reporting requirements for the state board of agricultural research and education, reporting requirements for the information technology department, and individual, estate, and trust income tax credits; and to repeal section 54-23.3-09, chapter 54-56, and sections 57-38-01.29 and 57-38-01.30, relating to reporting of new department of corrections and rehabilitation programs, the children's services coordinating committee, the homestead income tax credit, and the commercial property income tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 4-05.1-19 of the North Dakota Century Code is amended and reenacted as follows:

10. ~~Present~~Provide a status report to the budget section of the legislative management.

SECTION 2. AMENDMENT. Section 54-59-19 of the North Dakota Century Code is amended and reenacted as follows:

54-59-19. Information technology department annual report.

The department shall prepare and present an annual report to the information technology committee. ~~In addition to the presentation of the annual report to the information technology committee, the department shall present a summary of the annual report to the budget section.~~ The report must contain:

1. A list of all projects for which financing agreements have been executed.
2. A comparison of the department's rates charged for services compared to rates charged for comparable services in other states and in the private sector.
3. Information regarding the delivery of services to agencies, including service dependability, agency complaints, and information technology department responsiveness.
4. A description of the status and progress of programs established pursuant to chapter 54-46 and as specifically required by section 54-46-11.

192 SECTION 3. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:
 - 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.m. Geothermal energy device installation credit under section 57-38-01.8.~~
 - ~~p.n. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.~~
 - ~~q.o. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.~~
 - ~~r.p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).~~
 - s.q. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

¹⁹² Section 57-38-30.3 was also amended by section 1 of House Bill No. 1239, chapter 400, section 17 of House Bill No. 1043, chapter 57, section 2 of House Bill No. 1045, chapter 399, and section 2 of House Bill No. 1050, chapter 389.

¹⁹³ **SECTION 4. REPEAL.** Section 54-23.3-09 and chapter 54-56 and sections 57-38-01.29 and 57-38-01.30 of the North Dakota Century Code are repealed.

Approved March 15, 2017

Filed March 16, 2017

¹⁹³ Section 57-38-01.29 was also repealed by section 20 of House Bill No. 1043, chapter 57; section 57-38-01.30 was also repealed by section 20 of House Bill No. 1043, chapter 57.

CHAPTER 374**SENATE BILL NO. 2104**

(Government and Veterans Affairs Committee)
(At the request of the Information Technology Department)

AN ACT to amend and reenact subsection 1 of section 54-59-39 of the North Dakota Century Code, relating to mandatory provisions of information and confidentiality.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-59-39 of the North Dakota Century Code is amended and reenacted as follows:

1. The information technology department may request from any state agency:
 - a. All information required by 20 U.S.C. 9871(e)(2)(D);
 - 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; and
 - c. Unemployment insurance wage data from job service North Dakota for education and workforce development program evaluations, except that ~~job service North Dakota~~ the information technology department may not ~~disclose~~ rediscover any data identifying an individual unless the redisclosure is expressly permitted by a written agreement between job service North Dakota and the department or is otherwise expressly permitted or required by federal or state law.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 375**SENATE BILL NO. 2188**

(Senators Klein, Burckhard)
(Representatives Hatlestad, Zubke)

AN ACT to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to the authority of the department of commerce to provide boundary geography data to the United States census bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Boundary and annexation survey reporting.

At the discretion of each political subdivision, the department shall act on behalf of political subdivisions to deliver a consolidated response to the boundary and annexation survey and provide legal boundary geography data to the United States census bureau. The department shall coordinate with political subdivisions to ensure consistent, accurate, and integrated geography is provided to the United States census bureau.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 376

SENATE BILL NO. 2144

(Senators Wardner, Oehlke, Heckaman)
(Representatives D. Johnson, Monson, Boe)

AN ACT to amend and reenact sections 54-60.2-01 and 54-60.2-02 of the North Dakota Century Code, relating to workforce development grants for tribally controlled community colleges; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-60.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-60.2-01. Establishment of workforce development grant for tribally controlled community colleges.

There is established within the division of workforce development of the department of commerce a program to provide workforce development grants to tribally controlled community colleges in North Dakota. A tribally controlled community college in this state may apply to the department of commerce for a job training grant in such manner as the department of commerce prescribes. The department of commerce shall consult with the executive director of the Indian affairs commission to determine eligible tribally controlled community colleges and shall award grants based on the documented job placement rates at each eligible college.

SECTION 2. AMENDMENT. Section 54-60.2-02 of the North Dakota Century Code is amended and reenacted as follows:

54-60.2-02. ~~(Effective through July 31, 2017)~~ Purpose of grants.

1. Any grant awarded under section 54-60.2-01 may be used at the discretion of the college:
 - a. For development or enhancement of programs that assist in providing certificates or degrees to North Dakota students attending the college that qualify the student to obtain jobs for which applicants are being sought within the state, as identified by the department of commerce, job service North Dakota, or any of the federally recognized Indian tribes within North Dakota; or
 - b. To assist any North Dakota student attending the college to establish, or to assist in establishing, a new business operating within North Dakota that will employ North Dakota citizens.
2. Any funds provided to tribally controlled community colleges must be used to supplement, not supplant, any existing program or funding source of the college.

~~**(Effective after July 31, 2017) Purpose of grants.** Any grant awarded under section 54-60.2-01 may be used at the discretion of the college:~~

1. ~~For development of programs that assist in providing certificates or degrees to North Dakota students attending the college that qualify the student to obtain jobs for which applicants are being sought within the state, as identified by the department of commerce, job service North Dakota, or any of the federally recognized Indian tribes within North Dakota; or~~
2. ~~To assist any North Dakota student attending the college to establish, or to assist in establishing, a new business operating within North Dakota that will employ North Dakota citizens.~~

~~Any funds provided to tribally controlled community colleges must be used to supplement, not supplant, any existing program or funding source of the college.~~

SECTION 3. APPROPRIATION - STUDENT LOAN TRUST FUND. There is appropriated out of any moneys in the student loan trust fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of providing workforce grants to tribally controlled community colleges, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item.

Approved April 20, 2017

Filed April 21, 2017

CHAPTER 377

HOUSE BILL NO. 1235

(Representatives K. Koppelman, Delmore, Heinert, Kasper, Lefor, Roers Jones,
Sukut)
(Senators Armstrong, Holmberg, D. Larson, G. Lee, Unruh)

AN ACT to create and enact subsections 4 and 5 to section 54-61-02 of the North Dakota Century Code, relating to access to confidential records by the commission on legal counsel for indigents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 4 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

4. Notwithstanding any provision of state law making the records confidential, but subject to any prohibitions in federal law, in addition to or in lieu of a subpoena, in determining eligibility for public defender services the commission may obtain access, relevant to making an eligibility determination for indigent defense services, to:
 - a. All records of other state and local government agencies relevant to determination of eligibility for indigent defense services, including:
 - (1) Vital statistics, including records of marriage, birth, and divorce;
 - (2) Local tax and revenue records, including information on residence address, employer, income, and assets;
 - (3) Records concerning real and titled personal property;
 - (4) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;
 - (5) Employment security records;
 - (6) Workforce safety and insurance records pursuant to a release signed by an individual or as otherwise provided in section 65-05-32;
 - (7) Records of all agencies administering public assistance programs;
 - (8) Records of the department of transportation, which access is not subject to the requirements in section 39-16-03;
 - (9) Corrections records;
 - (10) Law enforcement records; and

- (11) Subject to an agreement with the state tax commissioner, state tax and revenue records, including information on residence address, employer, income, and assets; and
- b. Certain information contained in records held by private entities, subject to safeguards on privacy and information security, consisting of:
 - (1) The name, address, social security number, and other requested relevant income or asset information of the individual and the name and address of the employer of the individual, as appearing in customer records of public utilities, including cellular and wireless telephone service providers and cable television companies, pursuant to an administrative subpoena if requested; and
 - (2) Information on assets and liabilities of the individual held by financial institutions.

SECTION 2. Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

- 5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 378

HOUSE BILL NO. 1403

(Representatives Kasper, Rick C. Becker, Boehning, Headland, Keiser, Louser,
Nathe, D. Ruby)

(Senators Anderson, Bekkedahl, Casper, O. Larsen)

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to public employee health benefits transparency.

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:

Health insurance benefits coverage - Prescription drug coverage - Transparency - Audits - Confidentiality.

1. If the prescription drug coverage component of a health insurance benefits coverage contract received in response to a request for bids under section 54-52.1-04 utilizes the services of a pharmacy benefits manager, either contracted directly with a pharmacy benefits manager or indirectly through the health insurer, in addition to the factors set forth under section 54-52.1-04 the board shall consider and give preference to an insurer's contract that:
 - a. Provides the board or the board's auditor with a copy of the insurer's current contract with the pharmacy benefits management company which controls the prescriptions drug coverage offered as part of the health insurance benefits coverage, and if the contract is revised or a new contract is entered, requires the insurer to provide the board with the revision or new contract within thirty days of the change.
 - b. Provides the board with monthly claims data and information on all programs being implemented or modified, including prior authorization, step therapy, mandatory use of generic drugs, or quantity limits.
 - c. Describes the extent to which the board may customize the benefit plan design, including copayments, coinsurance, deductibles, and out-of-pocket limits; the drugs that are covered; the formulary; and the member programs implemented.
 - d. Describes the audit rights of the board.
2. The board may conduct annual audits to the extent permitted under the contract terms agreed to under subsection 1. The audits must include:
 - a. A review of a complete set of electronic prescription coverage claims data reflecting all submitted claims, including information fields identified by the board.
 - b. A review of a list of all programs that have been implemented or modified during the audit period under subsection 1, and in connection with each

- program the auditor shall report on the cost, the cost savings or avoidance, member disruption, the process for and number of overrides or approvals and disapprovals, and clinical outcomes.
- c. Recommendations for proposed changes to the prescription drug benefit programs to decrease costs and improve plan beneficiaries' health care treatment.
3. Information provided to the board under the contract provisions required under this section are confidential; however, the board may disclose the information to retained experts and the information retains its confidential status in the possession of these experts.
4. The board may retain an auditor of the board's choice which is not a competitor of the pharmacy benefits manager; a pharmaceutical manufacturer representative; or any retail, mail, or specialty drug pharmacy representative or vendor.

Approved April 26, 2017

Filed April 27, 2017

CHAPTER 379

HOUSE BILL NO. 1148

(Representatives Porter, Maragos, Toman)
(Senator Cook)

AN ACT to amend and reenact sections 54-52-01, 54-52-02.1, and 54-52-06.3 and subsections 3 and 4 of section 54-52-17 of the North Dakota Century Code, relating to a public employee retirement plan for firefighters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁴ **SECTION 1. AMENDMENT.** Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52-01. (Effective through July 31, 2017) Definition of terms.

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include state employees who elect to become members of the retirement plan established under chapter 54-52.6.
5. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers'

¹⁹⁴ Section 54-52-01 was also amended by section 12 of House Bill No. 1043, chapter 57, and section 2 of Senate Bill No. 2053, chapter 372.

fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

6. "Employer" means a governmental unit.
7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.
8. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.
9. "National guard security officer or firefighter" means a participating member who is:
 - a. A security police employee of the North Dakota national guard; or
 - b. A firefighter employee of the North Dakota national guard.
10. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.
11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.
12. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.
13. "Prior service" means service or employment prior to July 1, 1966.
14. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.
15. "Public employees retirement system" means the retirement plan and program established by this chapter.
16. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.
17. "Retirement board" or "board" means the governing authority created under section 54-52-03.
18. "Seasonal employee" means a participating member who does not work twelve months a year.

19. "Service" means employment on or after July 1, 1966.
20. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.
21. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.
22. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter 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, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

(Effective after July 31, 2017) Definition of terms. As used in this chapter, unless the context otherwise requires:

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include nonclassified state employees who elect to become members of the retirement plan established under chapter 54-52.6 but does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board.
5. "Employee" means any ~~person~~ individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds

controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

6. "Employer" means a governmental unit.
7. "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.
8. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.
- 8-9. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.
- 9-10. "National guard security officer or firefighter" means a participating member who is:
 - a. A security police employee of the North Dakota national guard; or
 - b. A firefighter employee of the North Dakota national guard.
- 10-11. "Participating member" means ~~an~~ an eligible ~~employees~~ employee who through payment into the plan ~~have~~ has established a claim against the plan.
- 11-12. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection ~~12~~ 13, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. ~~Participating members~~ A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins ~~begin~~ begins employment after August 1, 2005, ~~are~~ is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.
- 12-13. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.
- 13-14. "Prior service" means service or employment ~~prior to~~ before July 1, 1966.

- 14-15. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.
- 15-16. "Public employees retirement system" means the retirement plan and program established by this chapter.
- 16-17. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.
- 17-18. "Retirement board" or "board" means the ~~seven persons designated by this chapter as the governing authority for the retirement system created under section 54-52-03.~~
- 18-19. "Seasonal employee" means a participating member who does not work twelve months a year.
- 19-20. "Service" means employment on or after July 1, 1966.
- 20-21. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.
- 21-22. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.
- 22-23. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter 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, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

SECTION 2. AMENDMENT. Section 54-52-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.1. Political subdivisions authorized to join public employees retirement system.

1. A political subdivision may, on behalf of its permanent employees, on behalf of its peace officers, firefighters, and correctional officers separately from its other employees, and permanent noncertified employees only in the case of school districts, enter into agreements with the retirement board for the purpose of extending the benefits of the public employees retirement system, as provided in this chapter, to those employees. The agreement may, in accordance with this chapter, contain provisions relating to benefits, contributions, effective date, modification, administration, and other

appropriate provisions as the retirement board and the political subdivision agree upon, but the agreement must provide that:

- a. The political subdivision will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06 or 54-52-06.3 for peace officers, firefighters, and correctional officers participating separately from other political subdivision employees.
 - b. A portion of the moneys paid by the political subdivision may be used to pay administrative expenses of the retirement board.
2. Notwithstanding any other provision of law, a political subdivision having an existing police or firefighter pension plan may merge that plan into the public employees retirement system under rules adopted by and in a manner determined by the board.
 3. Notwithstanding any other provision of this chapter, 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 for any past service liability and the required employer contribution must be an amount determined sufficient to 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.

SECTION 3. 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, firefighters, and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer, firefighter, or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers, firefighters, 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, firefighter, 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 monthly reporting period of January 2013, and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2014. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's, firefighter'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, firefighter'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, firefighter's, or correctional officer's assessment.

¹⁹⁵ **SECTION 4. AMENDMENT.** Subsections 3 and 4 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

¹⁹⁵ Section 54-52-17 was also amended by section 3 of Senate Bill No. 2053, chapter 372.

3. Retirement dates are defined as follows:
- a. Normal retirement date, except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, 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 members first enrolled after December 31, 2015, except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, 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 ninety and the member attains a minimum age of sixty and has not received a retirement benefit under this chapter.
 - c. Normal retirement date for a national guard security officer or firefighter is:
 - (1) 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 eligible years of employment; or
 - (2) When the national guard security officer or firefighter 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, firefighter, 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, firefighter, or correctional officer attains the age of fifty-five years and has completed at least three eligible years of employment; or
 - (2) When the peace officer, firefighter, 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.
 - e. 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 eligible years of employment; 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.
- f. 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.
- g. Early retirement date, except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, 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 firefighter employed by a political subdivision or 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, firefighter, or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.
- h. 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~~ became disabled during the period of eligible employment; and
 - (2) ~~Applies~~ applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

4. The board shall calculate retirement benefits as follows:
 - a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:
 - (1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.
 - b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:
 - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
 - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
 - c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.
 - d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning ~~prior to~~before the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. Except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, early retirement benefits for members first enrolled after December 31, 2015, are calculated for single life benefits accrued to the date of termination of employment, but must be reduced by fixed rate of eight percent per year to account for benefit payments beginning before the normal retirement date. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
 - e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social

security benefits and by any workforce safety and insurance benefits paid.
The minimum monthly disability retirement benefit under this section is one hundred dollars.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 380

HOUSE BILL NO. 1189

(Representatives Keiser, Beadle, Boschee)
(Senators Burckhard, Klein, Laffen, Robinson)

AN ACT to amend and reenact subsection 3 of section 54-44.7-03 and section 54-44.7-04 of the North Dakota Century Code, relating to procurement procedures and exceptions to bidding thresholds for state building projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁶ **SECTION 1. AMENDMENT.** Subsection 3 of section 54-44.7-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The date for submission of information from interested persons or firms in response to an invitation must be not less than twenty-one days after publication of the invitation. Interested architect, engineer, and land surveying persons or firms must be required to respond to the invitation with the submission of the information required in general services administration forms ~~SF 254 and SF 255~~ form SF 330, architect-engineer related ~~services-questionnaire qualifications~~ for specific project, or such similar information as the agency selection committee may prescribe by rule.

SECTION 2. AMENDMENT. Section 54-44.7-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44.7-04. Exception.

1. All state agencies securing architect, engineer, construction management, or land surveying services for projects for which the fees are estimated not to exceed ~~twenty-five~~ thirty-five thousand dollars may employ the architects, engineers, construction managers, and land surveyors by direct negotiation and selection, taking into account all of the following:
 - a. The nature of the project.
 - b. The proximity of the architect, engineer, construction management, or land surveying services to the project.
 - c. The capability of the architect, engineer, construction manager, or land surveyor to produce the required services within a reasonable time.
 - d. Past performance.
 - e. Ability to meet project budget requirements.

This procedure shall still follow state policy set forth above.

¹⁹⁶ Section 54-44.7-03 was also amended by section 11 of House Bill No. 1043, chapter 57.

2. Fees paid pursuant to this section during the twelve-month period immediately preceding negotiation of the contract by any single state agency for professional services performed by any one architectural, engineering, or land surveying person or firm may not exceed ~~fifty~~seventy thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish the state agency with which the firm is negotiating a list of professional services, including the fees paid, performed for the state agency during the twelve months immediately preceding the contract being negotiated.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 381

HOUSE BILL NO. 1427

(Representatives Olson, Rich S. Becker, B. Koppelman, K. Koppelman, Owens,
Vetter)
(Senators Holmberg, J. Lee, Luick)

AN ACT to provide for a legislative management study of refugee resettlement in North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - REFUGEE RESETTLEMENT. During the 2017-18 interim, the legislative management shall consider studying refugee resettlement in the state. The study must include consideration of the impact, if any, of refugees on the wages or working conditions of the local workforce, state and local law enforcement, state and local government services, housing, the provision of medical care, child care, translation and interpreter services, and public education, including the provision of English language training. The study must include examination of the relevant federal and state laws on refugee resettlement, the role state and local government agencies may have in refugee resettlement matters, an overview of the security measures taken by the United States government prior to refugee resettlement, integration outcomes, and the religious, political, economic, and social conditions of refugees' countries of origin, including the prevalence of violence and other forms of oppression against women and children in those countries. The study must include examination of the number of refugees resettled in the state, including the number of refugees resettled by age and gender, the number of refugees resettled who are under eighteen years of age, the number of refugees resettled who are between forty and sixty-five years of age, the number of refugees over sixty-five years of age, the number of refugees who are male, the number of refugees who are female, the number of refugee children enrolled in a public school, the number of refugee children accessing English language learner services, the initial resettlement locations for refugees, and the numbers of refugees resettled with and without family already residing in the United States. The study must include input from stakeholders, including refugee resettlement agencies, law enforcement personnel, social and clinical service providers, educational leaders, medical providers, and representatives of county social services agencies, affected municipalities, and the department of human services. The legislative management shall reports its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 382

HOUSE BILL NO. 1423

(Representatives Mitskog, Monson, Sanford, Schreiber-Beck)
(Senators Heckaman, J. Lee, Luick)

AN ACT to provide for a legislative management study of the elementary and secondary education funding formula.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - EDUCATION FUNDING FORMULA - IN LIEU OF TAXES. During the 2017-18 interim, the legislative management shall consider studying the portion of the elementary and secondary education funding formula which relates to the utilization of in lieu of property tax funds for the purpose of identifying and addressing any inequities in the application of the formula. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved March 30, 2017

Filed March 30, 2017

CHAPTER 383

HOUSE BILL NO. 1418

(Representatives Mock, Beadle, Maragos)

AN ACT to provide for a legislative management study of statements of interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATEMENTS OF INTERESTS. During the 2017-18 interim, the legislative management shall consider studying the purpose and content of statements of interests and the forms and information required to be filed, including the appropriate financial interests and other necessary content. The study must include consideration of whether supplementary statements or updates of information are necessary and a determination as to who is required to file statements of interest and who should be filing statements of interest. The study also must include a review of filing deadlines and consideration of how long records should be retained. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 384

HOUSE BILL NO. 1358

(Representatives Beadle, D. Anderson, D. Johnson, M. Johnson, Lefor, Schreiber-Beck)
(Senators Casper, Oban)

AN ACT to provide for a legislative management study of the use of open educational resources in the elementary and secondary school system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - KINDERGARTEN THROUGH GRADE TWELVE OPEN EDUCATIONAL RESOURCES USAGE AND DEVELOPMENT. During the 2017-18 interim, the legislative management shall consider studying the use of open educational resources in the elementary and secondary school system. The study must include an analysis of potential cost savings for school districts and the department of public instruction; the availability of private sector partnerships that can aid in the development, adoption, implementation, and funding of open educational resources; and the steps necessary to establish North Dakota as a #GoOpen state with the United States department of education. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 385

HOUSE BILL NO. 1330

(Representatives Schatz, Carlson, Vigesaa)

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, the speaker of the house, and six senators and six representatives chosen biennially before the close of each regular legislative session.
2. In the house of representatives the majority leader shall appoint to the legislative management ~~four~~ members elected by the political party with the largest number of members in the house and the minority leader 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. The majority and minority leaders of the house of representatives shall make the appointments so as to give the two political parties having the most members in the house the same total proportionate representation on the legislative management as prevails in the house. In allocating the membership on the legislative management to each political party, the total number of members in the house of representatives must be divided by six; the resulting quotient must then be divided into the number of members of each of the two political parties of the house; the resulting quotient for each party of the house, rounded to the nearest whole number, is the number of members of that political party in the house to be on the legislative management. Notwithstanding this allocation, the minority political party in the house of representatives must be represented by at least two members on the legislative management.
3. In the senate the majority leader shall appoint to the legislative management ~~four~~ members elected by the 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. The majority and minority leaders of the senate shall make the appointments so as to give the two political parties having the most members in the senate the same total proportionate representation on the legislative management as prevails in the senate. In allocating the membership on the legislative management to each political party, the total number of members in the senate must be divided by six; the resulting quotient must then be divided into the number of members of each of the two political parties of the senate; the resulting quotient for each party of

the senate, rounded to the nearest whole number, is the number of members of that political party in the senate to be on the legislative management. Notwithstanding this allocation, the minority political party in the senate must be represented by at least two members on the legislative management.

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 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 re-elected to the senate, and no representative, who is not re-elected 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 re-elected 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 10, 2017

Filed April 10, 2017

CHAPTER 386

HOUSE BILL NO. 1318

(Representatives Schatz, Kasper, Rohr, D. Ruby, Toman)
(Senators O. Larsen, Unruh)

AN ACT to provide for a legislative management study of the state aid funding formula for elementary and secondary education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE AID FUNDING FORMULA FOR ELEMENTARY AND SECONDARY EDUCATION - COMMITTEE - APPOINTMENT - DUTIES.

1. During the 2017-18 interim, the legislative management shall consider appointing a committee consisting of five members of the senate and six members of the house of representatives to:
 - a. Examine how state aid for elementary and secondary education is determined and distributed under the state aid funding formula, analyze the impact of the state aid provided through the funding formula, and consider potential necessary changes to the funding formula to ensure equity, adequacy, and sustainability; and
 - b. Examine the delivery and administration of elementary and secondary education in the state and the short- and long-term policy and statutory changes that may result from or be necessitated by twenty-first century technological advances and global economics.
2. The legislative management shall designate the chairman and vice chairman of the committee.
3. The committee shall operate under the rules applicable to other legislative management committees, except the committee may create task forces or working groups to meet the study directives.
4. Any member of the legislative assembly appointed to serve on a task force or working group under this Act may receive per diem compensation and reimbursement for actual and necessary expenses, as provided by law. Any other individual appointed to serve on a task force or working group may receive reimbursement from the legislative council, for actual and necessary expenses, as provided by law for state officials.
5. The committee shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 387

HOUSE BILL NO. 1251

(Representatives Louser, Beadle, Brabandt, Dockter, B. Koppelman, M. Ruby, Vetter)
(Senators Burckhard, Hogue)

AN ACT to provide for a legislative management study of the creation of an inmate housing construction program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - INMATE HOUSING CONSTRUCTION PROGRAM. During the 2017-18 interim, the legislative management shall consider studying the creation of an inmate housing construction program to provide inmates with housing construction vocational skills through the construction of homes to be made available for sale to low-income home buyers. The study must include an analysis of the grants available to support the program, the ability to establish partnerships with private industry and apprentice opportunities with labor groups, and the ability to work with private industry to provide for the sale and transport of the completed homes. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 388**HOUSE BILL NO. 1202**

(Representatives D. Ruby, Paur, Schobinger)
(Senators Laffen, Oban, Unruh)

AN ACT to provide for a department of transportation study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. DEPARTMENT OF TRANSPORTATION STUDY - REPORT TO LEGISLATIVE ASSEMBLY. The department of transportation, in collaboration and consultation with the autonomous vehicle technology industry, shall study the use of vehicles equipped with automated driving systems on the highways in this state and the data or information stored or gathered by the use of those vehicles. The study must include a review of current laws dealing with licensing, registration, insurance, data ownership and use, and inspection and how they should apply to vehicles equipped with automated driving systems. The department of transportation shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 389

HOUSE BILL NO. 1050

(Legislative Management)
(Political Subdivision Taxation Committee)

AN ACT to amend and reenact subsection 3 of section 54-35-26 and subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to the list of economic development tax incentives subject to regular review and the application of tax credits against individual income tax liability; to repeal section 57-38-01.27 of the North Dakota Century Code, relating to the microbusiness income tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁷ **SECTION 1. AMENDMENT.** Subsection 3 of section 54-35-26 of the North Dakota Century Code is amended and reenacted as follows:

3. The legislative management interim committee assigned the study responsibility under this section may examine economic development tax incentives, shall complete analysis of the state-imposed tax aspects of the incentives it designates for analysis during the interim, and shall approve a plan to provide that each of the economic development tax incentives listed in this subsection is subject to a complete analysis within each six-year period. The interim committee may include in its recommendations any amendments to this section, including amendments to add or remove incentives from the list of incentives subject to analysis under this subsection. Analysis must be completed for state-imposed tax aspects of economic development tax incentives, including each of the following:
 - a. Renaissance zone credits and exemptions.
 - b. Research expense credit.
 - c. Agricultural commodity processing facility investment credit.
 - d. Biodiesel fuel production facility construction or retrofit credit, biodiesel fuel blending credit, and biodiesel fuel equipment credit.
 - e. Seed capital investment credit.
 - f. Wage and salary credit.
 - g. Internship program credit.
 - h. ~~Microbusiness credit.~~
 - i. Angel fund investment credit.

¹⁹⁷ Section 54-35-26 was also amended by section 1 of House Bill No. 1049, chapter 390, and section 5 of Senate Bill No. 2166, chapter 277.

- ~~j.i.~~ Workforce recruitment credit.
- ~~k.j.~~ Soybean or canola crushing facility construction or retrofit credit.
- ~~l.k.~~ Manufacturing automation equipment credit.
- ~~m.l.~~ New or expanding business exemption.
- ~~n.m.~~ Manufacturing and recycling equipment sales tax exemption.
- ~~o.n.~~ Coal severance and conversion tax exemptions.
- ~~p.o.~~ Oil and gas gross production and oil extraction tax exemptions.
- ~~q.p.~~ Fuel tax refunds for certain users.
- ~~r.q.~~ New jobs credit from income tax withholding.
- ~~s.r.~~ Any economic development tax incentive created by the sixty-fourth legislative assembly.

¹⁹⁸ **SECTION 2. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:
 - 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.

¹⁹⁸ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1239, chapter 400, section 17 of House Bill No. 1043, chapter 57, section 2 of House Bill No. 1045, chapter 399, and section 3 of Senate Bill No. 2032, chapter 373.

- l.k. Homestead income tax credit under section 57-38-01.29.
- m.l. Commercial property income tax credit under section 57-38-01.30.
- n.m. Research and experimental expenditures under section 57-38-30.5.
- o.n. Geothermal energy device installation credit under section 57-38-01.8.
- p.o. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- q.p. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- r.q. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s.r. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

SECTION 3. REPEAL. Section 57-38-01.27 of the North Dakota Century Code is repealed.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2016.

Approved April 28, 2017

Filed May 1, 2017

CHAPTER 390

HOUSE BILL NO. 1049

(Legislative Management)
(Political Subdivision Taxation Committee)

AN ACT to amend and reenact subsection 3 of section 54-35-26 of the North Dakota Century Code, relating to the list of economic development tax incentives subject to regular review; to repeal section 57-38-30.1 of the North Dakota Century Code, relating to the wage and salary credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁹ **SECTION 1. AMENDMENT.** Subsection 3 of section 54-35-26 of the North Dakota Century Code is amended and reenacted as follows:

3. The legislative management interim committee assigned the study responsibility under this section may examine economic development tax incentives, shall complete analysis of the state-imposed tax aspects of the incentives it designates for analysis during the interim, and shall approve a plan to provide that each of the economic development tax incentives listed in this subsection is subject to a complete analysis within each six-year period. The interim committee may include in its recommendations any amendments to this section, including amendments to add or remove incentives from the list of incentives subject to analysis under this subsection. Analysis must be completed for state-imposed tax aspects of economic development tax incentives, including each of the following:
 - a. Renaissance zone credits and exemptions.
 - b. Research expense credit.
 - c. Agricultural commodity processing facility investment credit.
 - d. Biodiesel fuel production facility construction or retrofit credit, biodiesel fuel blending credit, and biodiesel fuel equipment credit.
 - e. Seed capital investment credit.
 - f. ~~Wage and salary credit.~~
 - g. Internship program credit.
 - ~~h-g.~~ Microbusiness credit.
 - ~~i-h.~~ Angel fund investment credit.
 - ~~j-i.~~ Workforce recruitment credit.

¹⁹⁹ Section 54-35-26 was also amended by section 1 of House Bill No. 1050, chapter 389, and section 5 of Senate Bill No. 2166, chapter 277.

- k-j. Soybean or canola crushing facility construction or retrofit credit.
- l-k. Manufacturing automation equipment credit.
- m-l. New or expanding business exemption.
- n-m. Manufacturing and recycling equipment sales tax exemption.
- o-n. Coal severance and conversion tax exemptions.
- p-o. Oil and gas gross production and oil extraction tax exemptions.
- q-p. Fuel tax refunds for certain users.
- r-q. New jobs credit from income tax withholding.
- s-r. Any economic development tax incentive created by the sixty-fourth legislative assembly.

SECTION 2. REPEAL. Section 57-38-30.1 of the North Dakota Century Code is repealed.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2016.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 391

HOUSE BILL NO. 1431

(Representatives Mock, Hanson, Schneider)
(Senator Oban)

AN ACT to amend and reenact section 54-35-02.8 of the North Dakota Century Code, relating to the legislative ethics committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.8 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.8. Legislative ethics committee.

The legislative management, during each biennium, shall appoint an ethics committee to consider or prepare a legislative code of ethics. The committee must include members of the majority and minority parties of each house. The committee may recommend legislation relating to legislative ethics. The committee shall operate according to the laws and procedures governing the operation of other legislative management interim committees.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 392

HOUSE BILL NO. 1173

(Representatives Kempenich, Kreidt, Nathe)
(Senators Klein, Wanzek)

AN ACT to amend and reenact section 54-35-02.2 of the North Dakota Century Code, relating to the powers and duties of the legislative audit and fiscal review committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.

The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever the committee may determine or have reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present such evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept such evidence or information and shall immediately commence such additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the attorney general immediately shall prosecute such official or employee as provided by law. Whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 393

HOUSE BILL NO. 1405

(Representatives Schneider, P. Anderson, Boschee, Delmore, Dobervich,
Guggisberg, Hogan, Mitskog)
(Senators Nelson, Oban)

AN ACT to amend and reenact section 54-34.3-10 of the North Dakota Century Code, relating to the commission on the status of women.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-34.3-10 of the North Dakota Century Code is amended and reenacted as follows:

54-34.3-10. Commission on the status of women - Appointment - Expenses - Duties.

1. There is established a commission on the status of women. This commission consists of five members. The governor shall appoint each member for a term of four years, staggered so that the term of at least one member expires July first of each year. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the unexpired term.
2. The members are entitled to be paid for mileage and actual expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees.
3. This commission shall ~~coordinate~~:
 - a. Coordinate activities and serve as a clearinghouse and an advisory group to the division for information relating to economic development programs that focus on career development for women. ~~This commission shall prepare~~
 - b. Provide a biennial report by September first of each even-numbered year to the director of the department of commerce division of economic development and finance and the governor on the findings and recommendations of the commission and any proposed legislation necessary to implement the recommendations.
 - c. Prepare for and perform followup duties in connection with state, regional, and national conferences, encourage interest, participation, and cooperation with state departments, agencies, and other organizations in developing needed services, facilities, and opportunities, and provide consultant help to local organizations created for the purpose of coordinating activities for the economic and career development of women.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 394

HOUSE BILL NO. 1155

(Representatives Delzer, Bellew, Carlson, Monson, Streyler)

AN ACT to amend and reenact sections 54-27.2-01, 54-27.2-03, and 54-44.1-12 of the North Dakota Century Code, relating to the balance of the budget stabilization fund, transfers and expenditures from the budget stabilization fund, and the allotment of funds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-27.2-01. Budget stabilization fund.

The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be ~~deposited in~~credited to 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 at the end of any fiscal year to an amount greater than ~~nine and one-half~~nine 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~~or credited to the fund but must be deposited instead in the state general fund.

SECTION 2. AMENDMENT. Section 54-27.2-03 of the North Dakota Century Code is amended and reenacted as follows:

54-27.2-03. Transfers and expenditures from budget stabilization fund.

~~If the director of the office of management and budget projects that general fund revenues for the biennium will be at least two and one-half percent less than estimated by the most recently adjourned special or regular session of the legislative assembly, and if the governor orders a transfer, which must be reported to the budget section of the legislative management, the state treasurer shall transfer the appropriate funds from the budget stabilization fund to the state general fund to offset the decrease in general fund revenues. The amount transferred from the budget stabilization fund upon order of the governor may not exceed the difference between an amount two and one-half percent below the general fund revenue projections for the biennium of the most recently adjourned special or regular session of the legislative assembly and the general fund revenue projections for the biennium by the director of the office of management and budget. The amount~~

1. The governor may order transfers from the budget stabilization fund to the general fund as follows:
 - a. After general fund allotments totaling at least three percent have been made during the biennium under section 54-44.1-12, the governor may

- order a transfer up to an amount equal to three percent of general fund appropriations.
- b. If the maximum transfer from the budget stabilization fund is made to the general fund under subdivision a and an additional general fund allotment of at least one percent is made under section 54-44.1-12, the governor may order a transfer up to an amount equal to two percent of general fund appropriations.
 - c. If the maximum transfer from the budget stabilization fund is made to the general fund under subdivision b and an additional general fund allotment of at least one percent is made under section 54-44.1-12, the governor may order a transfer up to an amount equal to three percent of general fund appropriations.
 - d. If the maximum transfer from the budget stabilization fund is made to the general fund under subdivision c and an additional general fund allotment of at least one percent is made under section 54-44.1-12, the governor may transfer any remaining funds in the budget stabilization fund to the general fund.
 - e. The amount of a transfer made under any subdivision of this subsection may not exceed the difference between the general fund revenue projections for the biennium of the most recently adjourned special or regular session of the legislative assembly and the revised general fund revenue projections for the biennium, less the amounts of any allotments ordered under section 54-44.1-12 during the biennium, as determined by the director of the office of management and budget. For purposes of this subsection, "general fund revenue projections for the biennium" includes the general fund balance at the beginning of the biennium.
 - f. For purposes of this subsection, the calculation of total percentage general fund allotments made under section 54-44.1-12 must be based on total general fund allotments after any allotment exemption granted by the director of the budget compared to total general fund appropriations.
2. Any amounts transferred from the budget stabilization fund upon order of the governor to the state general fund may be expended within the limits of legislative guidelines and general fund appropriations of the most recently adjourned special or regular session of the legislative assembly. For purposes of this section, "general fund revenues for the biennium" and "general fund revenue projections for the biennium" include the general fund balance at the beginning of the biennium. "general fund appropriations" includes total biennium general fund appropriations approved by the most recently adjourned special or regular session of the legislative assembly. The director of the office of management and budget must provide a report to the budget section of the legislative management when a transfer is made under this section.

²⁰⁰ **SECTION 3. AMENDMENT.** Section 54-44.1-12 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-12. Control over rate of expenditures.

²⁰⁰ Section 54-44.1-12 was also amended by section 6 of Senate Bill No. 2272, chapter 368.

1. The director of the budget shall exercise continual control over the execution of the budget affecting the departments and agencies of state government, with the exception of the legislative and judicial branches. Execution means the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of allotments. The allotment must be made by specific fund and all departments and agencies that receive moneys from that fund must be allotted on a uniform percentage basis; ~~except that appropriations to the department of public instruction for state school aid, transportation aid, and special education aid may only be allotted to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund as follows:~~
 - a. ~~The first two and one-half percent allotment from the general fund must be offset with a transfer from the foundation aid stabilization fund.~~
 - b. ~~Any general fund allotment in excess of two and one-half percent that is necessary, after all moneys available in the budget stabilization fund have been transferred to the general fund under section 54-27-2-03, may be offset with a transfer from the foundation aid stabilization fund~~
 - a. The following appropriations may be allotted only to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund:
 - (1) General fund appropriations to the department of public instruction for state school aid, transportation aid, and special education aid; and
 - (2) General fund appropriations to the department of career and technical education for grants to school districts.
 - b. After allotments of two and one-half percent have been ordered during a biennium, the director of the budget may exempt the following appropriations from up to one percent of an allotment each biennium:
 - (1) General fund appropriations to the department of corrections and rehabilitation; and
 - (2) General fund appropriations to the department of human services for direct care programs.
2. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director shall find one or more of the following circumstances to exist:
 - a. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
 - b. The payment or the obligation incurred is not authorized by law.
 - c. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, including:

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- (1) Statements of legislative intent expressed in enacted appropriation measures or other measures enacted by the legislative assembly; and
 - (2) Statements of purpose of amendment explaining amendments to enacted appropriation measures, as recorded in the journals of the legislative assembly.
- d. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

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

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 395

HOUSE BILL NO. 1029

(Legislative Management)
(Government Finance Committee)

AN ACT to create and enact a new section to chapter 54-27 of the North Dakota Century Code, relating to acceptance of federal funds; and to provide for a legislative management study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies.

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:

Federal funding requirements - State agency analysis.

Each state agency, excluding entities under the control of the state board of higher education, prior to applying for or accepting federal grant funds, shall:

1. Consider the federal requirements that the state must comply with as a condition of receipt of the federal funds;
2. Determine that acceptance of the federal funds does not subject the state to undue federal oversight or regulations; and
3. Determine that the federal requirements are not in conflict with legislative intent.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - STATUTORY AND REGULATORY REQUIREMENTS PLACED ON NORTH DAKOTA STATE GOVERNMENT AGENCIES BY UNITED STATES GOVERNMENT AGENCIES.

During the 2017-18 interim, the legislative management shall consider studying the statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funding to determine whether there are viable options to meet the needs of our state without having the federal government's oversight and involvement, which state needs can be met if federal funding associated with undesirable regulation or excessive direct and indirect costs is refused, and whether the benefits of accepting certain federal funds outweighs the requirements of participation in the federal programs. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 396**HOUSE BILL NO. 1149**

(Representative Porter)

AN ACT to amend and reenact section 54-10-27 of North Dakota Century Code, relating to audits of occupational and professional boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-27 of the North Dakota Century Code is amended and reenacted as follows:

54-10-27. Occupational and professional boards - Audits and reports.

The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant. The accountant conducting the audit shall submit the audit report to the state auditor's office. If the report is in the form and style prescribed by the state auditor, the state auditor may not audit that board. An occupational or professional board may request the state auditor to conduct its audit, and if the state auditor agrees to conduct the audit, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account. Instead of providing for an audit every two years, an occupational or professional board that has less than ~~fiftytwo hundred~~ fiftytwo hundred thousand dollars of annual receipts may submit an annual report to the state auditor. The report must contain the information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the occupational or professional board an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge an occupational or professional board a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

Approved April 10, 2017

Filed April 10, 2017

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 397

HOUSE BILL NO. 1089

(Political Subdivisions Committee)
(At the request of the Parks and Recreation Department)

AN ACT to create and enact subsection 10 to section 55-08-05 of the North Dakota Century Code, relating to advertising sales in parks and recreation publications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 10 to section 55-08-05 of the North Dakota Century Code is created and enacted as follows:

10. Allow the sale of advertising in parks and recreation publications. The director may make rules regarding advertisement contracts and charges, space availability, and content.

Approved March 2, 2017

Filed March 3, 2017

TAXATION

CHAPTER 398

HOUSE BILL NO. 1354

(Representatives Dockter, Headland, Nathe, Owens)
(Senator Schaible)

AN ACT to create and enact a new subsection to section 57-01-02 of the North Dakota Century Code, relating to the ability of the tax commissioner to make disclosures regarding taxpayers receiving tax deductions or credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-01-02 of the North Dakota Century Code is created and enacted as follows:

Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose the amount of any tax deduction or credit that was claimed or earned by a taxpayer. This subsection does not authorize disclosure of the taxpayer's name or any other information prohibited from disclosure under title 57. The tax commissioner shall provide notice to taxpayers of possible disclosure under this subsection, in a manner as prescribed by the tax commissioner.

SECTION 2. EFFECTIVE DATE. This Act is effective for tax incentives awarded after July 31, 2017.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 399

HOUSE BILL NO. 1045

(Legislative Management)
(Political Subdivision Taxation Committee)

AN ACT to amend and reenact section 57-38-01.26 and subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to the angel fund investment tax credit; to provide a penalty; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.26. (Effective for investments made before July 1, 2017) 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 prior to July 1, 2017, in an angel fund that is a domestic organization ~~created~~organized before July 1, 2017, under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to 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 five hundred 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. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested. 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 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, limited liability limited 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. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.
 - 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 and the amount of the 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.
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 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.

- e. ~~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.~~

201 **SECTION 2. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.26. (Effective for investments made after June 30, 2017) Angel fund investment investor tax credit.

²⁰¹ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1239, chapter 400, section 17 of House Bill No. 1043, chapter 57, section 2 of House Bill No. 1050, chapter 389, and section 3 of Senate Bill No. 2032, chapter 373.

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 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 remitted by the taxpayer to 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 five hundred 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. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested. 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 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, limited liability limited 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. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.
 - 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.~~
- ~~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 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.
- e. 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.~~
1. For investments made after June 30, 2017, an angel investor is entitled to a credit against the income tax liability under section 57-38-30.3 for investments made by a certified angel fund into an in-state qualified business or an out-of-state qualified business. The credit is equal to thirty-five percent of the amount invested by the angel fund on behalf of the angel investor in an in-state qualified business during the taxable year and twenty-five percent of the amount invested by the angel fund on behalf of the angel investor in an out-of-state qualified business during the taxable year.
 - a. The aggregate amount of credits allowed to an angel investor in a taxable year is limited to forty-five thousand dollars. The aggregate amount of credits allowed to an angel investor for investments made in all taxable years is five hundred thousand dollars. The limitation under this subdivision does not apply to the angel fund but applies to each angel investor.
 - b. The credit must be claimed in the taxable year in which the investment is made in an in-state qualified business or an out-of-state qualified business. The credit allowed may not exceed the liability for tax under this chapter. 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 five succeeding taxable years.
 - c. 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.
 - d. Angel investors may not receive more than five million dollars in aggregate credits under this section during the life of an angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
 - e. Investments placed in escrow do not qualify for the credit.

- f. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this section against the individual's state income tax liability under section 57-38-30.3.
2. For purposes of this section:
- a. "Early-stage entity" means an entity with annual revenues of up to two million dollars.
- b. "In-state qualified business" means an early-stage or mid-stage private, nonpublicly traded enterprise that:
- (1) Is created, or its satellite operation is created, as a for-profit entity under the laws of this state.
 - (2) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in this state that has or is projected to have more than ten employees in this state.
 - (3) Relies on research or the development of new products and processes in its plans for growth and profitability.
 - (4) Is in compliance with state and federal securities laws.
 - (5) Is not an entity or enterprise which is engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
 - (6) Is certified as an in-state qualified business that meets the requirements of this section by the department of commerce.
- c. "Investment" means a cash investment in an in-state qualified business or out-of-state qualified business that is made in exchange for common stock, a partnership or membership interest, preferred stock, debt with a mandatory conversion to equity, or an equivalent ownership interest as determined by the tax commissioner.
- d. "Mid-stage entity" means an entity with annual revenues over two million dollars not to exceed ten million dollars.
- e. "Out-of-state qualified business" means an early-stage or mid-stage private, nonpublicly traded enterprise that:
- (1) Is created as a for-profit entity.
 - (2) Relies on research or the development of new products and processes in its plans for growth and profitability.

- (3) Is in compliance with state and federal securities laws.
 - (4) Is not an entity or enterprise engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
 - (5) Is certified as an out-of-state qualified business that meets the requirements of this section by the department of commerce.
3. An angel fund must:
- a. Be a passthrough entity organized after June 30, 2017, as a domestic for-profit entity under the laws of this state, and have its headquarters in this state.
 - b. Not have invested, or intend on investing during its certification period, in real estate or real estate activities as described under subdivision e of subsection 2.
 - c. Consist of at least six accredited investors as defined in regulation D, rule 501 of the federal Securities Act of 1933.
 - d. Not have more than twenty-five percent of its capitalized investment assets owned by any one investor.
 - e. Have at least five hundred thousand dollars in commitments from accredited investors which are 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 subsection by the department of commerce.
 - h. Be in, and remain in, compliance with state and federal securities laws, and invest only in in-state qualified businesses or an out-of-state qualified business that are issuing securities in compliance with state and federal securities laws.
4. On or before December 31, 2019, and every two calendar years thereafter, a minimum of fifty percent of an angel fund's investments, as defined under subdivision c of subsection 2, must be invested into an in-state qualified business.
5. An angel fund shall hold the investment in an in-state qualified business or an out-of-state qualified business for at least three years from the date of investment. The three-year period does not apply if, before the end of the three-year period:

- a. The investment becomes worthless;
 - b. Eighty percent or more of the assets of the in-state qualified business or out-of-state qualified business are sold;
 - c. The in-state qualified business or out-of-state qualified business is sold;
 - d. The common stock of the in-state qualified business or out-of-state qualified business begins trading on a public exchange; or
 - e. A partner, shareholder, or member of the angel fund dies, in which case the exception to the three-year holding period only applies to the deceased individual's portion of the investment and related credit.
6. Within thirty days after the date on which an angel fund makes an investment in an in-state qualified business or an out-of-state qualified business, the angel fund shall report the investment to the tax commissioner on forms and in the manner prescribed by the tax commissioner. The report must contain:
- a. The name, address, and federal employer identification number of the angel fund;
 - b. The total amount of the investment from all angel investors investing in the in-state qualified business or out-of-state qualified business;
 - c. The name, address, and social security or federal identification number of each angel investor investing in the in-state qualified business or out-of-state qualified business;
 - d. The amount invested by each angel investor in the in-state qualified business or out-of-state qualified business;
 - e. The type of security received by the angel fund in exchange for the investment;
 - f. The name, address, and federal employer identification number of the in-state qualified business or out-of-state qualified business;
 - g. The type of industry in which the in-state qualified business or out-of-state qualified business is engaged; and
 - h. Any other information the tax commissioner determines is necessary for administration of this section.
7. An angel fund is subject to a penalty of one thousand dollars per month for each month, or fraction thereof, the report under subsection 6 is not filed. The tax commissioner, for good cause shown, may waive all or part of the penalty imposed under this subsection.
8. By January thirty-first of each year, the angel fund shall file with the tax commissioner a report showing:
- a. The name and address of each in-state qualified business or out-of-state qualified business in which the angel fund has made an investment;

- b. The principal place of business for each in-state qualified business or out-of-state qualified business reported under subdivision a:
 - c. The total amount invested in each in-state qualified business or out-of-state qualified business; and
 - d. Any other information the tax commissioner determines is necessary for administration of this section.
9. For an angel fund certified before July 1, 2017, within thirty days after the end of each 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 and the amount of the investment.
10. Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose any information described under subsections 6, 8, and 9. This subsection does not authorize disclosure of the angel investor's name, social security number or federal employer identification number, address, or any other information prohibited from disclosure under this chapter.
11. Angel investors may be actively involved in the in-state qualified businesses or out-of-state qualified businesses in which the angel fund invests but the angel fund may not invest in any in-state qualified business or out-of-state qualified business if any one angel investor owns directly or indirectly more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business. The angel fund may not invest in an in-state qualified business or an out-of-state qualified business if any one angel investor is a partner, shareholder, or member of another passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business.
12. Failure to comply with any provision of this section is cause to revoke the certification of an angel fund or an in-state qualified business or an out-of-state qualified business, or disallow the credit attributable to the noncompliance.
 - a. Notice of the revocation of the angel fund or an in-state qualified business's or out-of-state qualified business's certification must be provided to the angel fund or the in-state qualified business or out-of-state qualified business by the tax commissioner, department of commerce, or securities commissioner. Within thirty days of receipt of the notice, the angel fund shall provide a copy of the notice to each of its angel investors.
 - b. The angel fund's investors shall file an amended return for each taxable year in which the disallowed credit reduced the investor's income tax liability and pay the amount due. The amended return, if required, must be filed within ninety days after the date of the written notice given to the angel fund.
 - c. If the amended return is not timely filed, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.

- d. If an amended return is filed as required under subdivision b, the tax commissioner has two years after the amended return is filed in which to audit and assess any tax due attributable to the revocation of the credit, even though other time periods for assessment under this chapter have expired. This subdivision does not limit or restrict any other time period for assessment under this chapter that has not expired.
13. An angel fund or a representative of the fund that knowingly makes, or causes to be made, any material false statement or representation in any application, report, or other document required to be filed under any provision of this section, or omits to state any material statement or fact in any such application, report, or other document required to be filed under any provision of this section, or fails to file the report required in subsection 8 or 9, and after thirty days' notice to file is given by the tax commissioner, is subject to a penalty of ten thousand dollars.
14. Notwithstanding any other provision of law, the tax commissioner, securities commissioner, and the department of commerce may exchange any information obtained under this section to the extent necessary to administer this section.

SECTION 3. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:
- a. Family care tax credit under section 57-38-01.20.
 - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - c. Agricultural business investment tax credit under section 57-38.6-03.
 - d. Seed capital investment tax credit under section 57-38.5-03.
 - e. Planned gift tax credit under section 57-38-01.21.
 - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
 - g. Internship employment tax credit under section 57-38-01.24.
 - h. Workforce recruitment credit under section 57-38-01.25.
 - i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first taxable year beginning after December 31, 2016).
 - j. 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-m. Geothermal energy device installation credit under section 57-38-01.8.
- p-n. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- q-o. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- r-p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s-q. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.
- r. Angel investor tax credit under section 57-38-01.26.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2016.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 400

HOUSE BILL NO. 1239

(Representatives K. Koppelman, Brabandt, Karls, Kasper, B. Koppelman, McWilliams,
M. Nelson, Olson, Skroch, Sukut)
(Senators Erbele, D. Larson)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an individual income tax deduction for a birth resulting in stillbirth; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰² **SECTION 1.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by an amount equal to the exemption available for a qualifying child under section 152 of the Internal Revenue Code [26 U.S.C. 152], as amended, for each birth resulting in stillbirth, as defined in section 23-02.1-01, for which a fetal death certificate has been filed under section 23-02.1-20. For purposes of this subdivision, the exemption may only be claimed in the taxable year in which the stillbirth occurred.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2016.

Approved March 13, 2017

Filed March 13, 2017

²⁰² Section 57-38-30.3 was also amended by section 17 of House Bill No. 1043, chapter 57, section 2 of House Bill No. 1045, chapter 399, section 2 of House Bill No. 1050, chapter 389, and section 3 of Senate Bill No. 2032, chapter 373.

CHAPTER 401

HOUSE BILL NO. 1027

(Legislative Management)
(Economic Impact Committee)

AN ACT to amend and reenact subsection 2 of section 57-40.6-01, section 57-40.6-04, and subsection 4 of 57-40.6-10 of the North Dakota Century Code, relating to the standards and guidelines for emergency services communications systems; and to repeal section 57-40.6-03.1 of the North Dakota Century Code, relating to 911 database management charges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~contacting~~ 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, and voice over internet protocol service.

SECTION 2. AMENDMENT. Section 57-40.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-04. Fee collection procedure.

An assessed communications service provider may retain the actual costs of administration in collection of the fee and any telephone exchange access service provider charges for 911 database management, not to exceed five percent of the fee collected. The fee proceeds must be paid by the assessed communications service provider within thirty days after it is collected from the subscriber or customer unless the provider has fewer than ten subscribers or customers in a jurisdiction, in which case the provider may pay the proceeds quarterly.

SECTION 3. AMENDMENT. Subsection 4 of section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

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. 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 public safety services to calls for service in the public safety answering point's service area.
- d. Have two-way communication with all public safety services 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, 2015, 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, 2015, 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 a felony conviction, at a minimum consistent with the national crime information center standards;
 - (2) Complete pre-employment screening for illegal substance use and hearing;
 - (3) Complete training through an association of public safety communications officials course or equivalent course. Meet and maintain the minimum qualifications and required certifications as established by the emergency services communications coordinating committee;
 - (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 initial and 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.

SECTION 4. REPEAL. Section 57-40.6-03.1 of the North Dakota Century Code is repealed.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 402

HOUSE BILL NO. 1152

(Representatives Delzer, Carlson, Headland)

AN ACT to amend and reenact sections 57-51.1-07.3 and 57-51.1-07.5 of the North Dakota Century Code, relating to the state share of oil and gas tax allocations; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.

There is established a special fund in the state treasury to be known as the oil and gas research fund. Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund, tax relief fund, budget stabilization fund, strategic investment and improvements fund, ~~or the state disaster relief fund, or lignite research fund~~, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to ten million dollars per biennium. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

SECTION 2. AMENDMENT. Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.5. ~~(Effective through June 30, 2017) 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 million dollars into the tax relief 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, but not in an amount that would bring the unobligated balance in the fund to more than twenty-five million dollars; and~~
- ~~6. Any additional revenues:~~

- a. Seventy percent into the strategic investment and improvements fund; and
- b. Thirty percent into the political subdivision allocation fund.

(Effective after June 30, 2017) 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 in the following order:

1. The first two hundred million dollars into the state general fund;
2. The next ~~three~~two hundred million dollars into the tax relief fund;
3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;
4. The~~For the period beginning August 1, 2017, and ending July 31, 2019, the next one~~two hundred million dollars into the state general fund and after July 31, 2019, the next one hundred million dollars into the state general fund;
- 4-5. ~~The next one hundred million dollars into the strategic investment and improvements fund;~~
 - a. Eighty percent into the strategic investment and improvements fund and twenty percent into the lignite research fund until three million dollars has been deposited into the lignite research fund to be used for advanced energy technology grants; and
 - b. One hundred percent into the strategic investment and improvements fund after three million dollars has been deposited into the lignite research fund;
- 5-6. ~~The next twenty-two~~twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than ~~twenty-five~~twenty million dollars; and
- 6-7. Any additional revenues into the strategic investment and improvements fund.

SECTION 3. EFFECTIVE DATE. This Act is effective for tax collections received by the tax commissioner after June 30, 2017.

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

Approved April 27, 2017

Filed April 28, 2017

CHAPTER 403

SENATE BILL NO. 2101

(Finance and Taxation Committee)
(At the request of the Department of Trust Lands)

AN ACT to amend and reenact subsection 1 of section 57-62-02 of the North Dakota Century Code, relating to the coal development trust fund; and to repeal section 15-03-05.1 of the North Dakota Century Code, relating to calculation of coal development trust fund income.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰³ **SECTION 1. AMENDMENT.** Subsection 1 of section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Thirty percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal-impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter 15.1-36. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the ~~school construction assistance loan~~ general fund of the state. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15.1-36.

SECTION 2. REPEAL. Section 15-03-05.1 of the North Dakota Century Code is repealed.

Approved March 14, 2017

Filed March 15, 2017

²⁰³ Section 57-62-02 was also amended by section 4 of House Bill No. 1005, chapter 4, section 21 of Senate Bill No. 2014, chapter 39, and section 8 of Senate Bill No. 2272, chapter 368.

CHAPTER 404

SENATE BILL NO. 2031

(Legislative Management)
(Energy Development and Transmission Committee)

AN ACT to amend and reenact section 57-60-14 of the North Dakota Century Code, relating to the allocation of coal conversion tax revenue collections; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

57-60-14. (~~Effective through July 31, 2018~~) Allocation of revenue - Continuing appropriation.

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter, fifteen percent to the county and eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund. From July 1, 2007, through June 30, 2009, three and one-half percent of all funds allocated to the state general fund pursuant to this chapter must be allocated to the lignite research fund and after June 30, 2009, five percent of all funds allocated to the state general fund pursuant to this chapter must be allocated to the lignite research fund, for the purposes defined in section 57-61-01.5.
2. Notwithstanding any other provision of law, the allocation under this section to each county may not be less in each calendar year than the amount certified to the state treasurer for each county under this section in the immediately preceding calendar year, except that through December 31, 2009, the portion of the revenue allocation to each county which is attributable to a coal gasification coal conversion facility must exclude consideration of calendar year 2001, and be based on calendar year 2000 or the appropriate year after 2001, whichever is greater. For a county that has received less in a calendar year than the amount certified to the state treasurer for that county in the immediately preceding calendar year, not later than January tenth of the following year, the county auditor shall calculate the amount that is due under this subsection and submit a statement of the amount to the state treasurer. The state treasurer shall verify the stated amount and make the required payment under this subsection to the county, from collections received under section 57-60-02, not later than March first of the following year. The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments. Money received by a county under this subsection must be distributed pursuant to section 57-60-15.

3. Notwithstanding any other provision of law, for a county in which is located a coal conversion facility that was not a coal conversion facility under this chapter before January 1, 2002, that county must receive for calendar year 2002 at least as much under this section as was received by that county and taxing districts in that county in property taxes for that facility for taxable year 2001. For years after 2002, subsection 2 applies to allocations to that county under this section, except that for a county described in this subsection, amounts received for any calendar year must be allocated by the county in the same manner property taxes for the facility were allocated for taxable year 2001.

~~(Effective after July 31, 2018) Allocation of revenue - Continuing appropriation.~~

- ~~1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter, fifteen percent to the county and eighty five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund.~~
- ~~2. Notwithstanding any other provision of law, the allocation under this section to each county may not be less in each calendar year than the amount certified to the state treasurer for each county under this section in the immediately preceding calendar year, except that through December 31, 2009, the portion of the revenue allocation to each county which is attributable to a coal gasification coal conversion facility must exclude consideration of calendar year 2001, and be based on calendar year 2000 or the appropriate year after 2001, whichever is greater. For a county that has received less in a calendar year than the amount certified to the state treasurer for that county in the immediately preceding calendar year, not later than January tenth of the following year, the county auditor shall calculate the amount that is due under this subsection and submit a statement of the amount to the state treasurer. The state treasurer shall verify the stated amount and make the required payment under this subsection to the county, from collections received under section 57-60-02, not later than March first of the following year. The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments. Money received by a county under this subsection must be distributed pursuant to section 57-60-15.~~
- ~~3. Notwithstanding any other provision of law, for a county in which is located a coal conversion facility that was not a coal conversion facility under this chapter before January 1, 2002, that county must receive for calendar year 2002 at least as much under this section as was received by that county and taxing districts in that county in property taxes for that facility for taxable year 2001. For years after 2002, subsection 2 applies to allocations to that county under this section, except that for a county described in this subsection, amounts received for any calendar year must be allocated by the county in the same manner property taxes for the facility were allocated for taxable year 2001.~~

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 405

SENATE BILL NO. 2133

(Senators Unruh, Bekkedahl, Dotzenrod)
(Representatives Dockter, Headland, Mitskog)

AN ACT to amend and reenact subsection 8 of section 57-60-01, subsection 1 of section 57-60-02, and section 57-60-02.1 of the North Dakota Century Code, relating to the coal conversion facilities privilege tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, ~~but not including any revenue derived from transportation, transmission, distribution, or other events which occur after completion of the process of production of the products of the facility.~~ For the purpose of computing the tax imposed by this chapter, "gross receipts" does not include:
 - a. Any any financial assistance, whether in the form of price guarantee payments or otherwise, provided by the federal government or any agency of the federal government;
 - b. ~~Any revenue derived from the sale of byproducts as herein defined to a maximum of twenty percent of the gross receipts as defined in this subsection;~~
 - c. ~~Any revenue derived from the sale and transportation of carbon dioxide for use in the enhanced recovery of oil or natural gas; or~~
 - d. ~~Prior to January 1, 2010, any revenue received by the operator of a coal gasification plant to the extent the quotient of the gross receipts realized by the operator divided by the synthetic natural gas produced and sold during a month, in units of one thousand cubic feet [28316.85 liters] of synthetic gas, exceeds the ceiling price. For calendar years 2001 and 2002, ceiling price means \$4.25 for each thousand cubic feet [28316.85 liters] of synthetic natural gas produced and sold; and the ceiling price for 2003 is \$4.35; for 2004, \$4.45; for 2005, \$4.55; for 2006, \$4.65; for 2007, \$4.75; for 2008, \$4.86; and for 2009, \$4.97.~~

SECTION 2. AMENDMENT. Subsection 1 of section 57-60-02 of the North Dakota Century Code is amended and reenacted as follows:

1. For all coal conversion facilities, except as otherwise provided in this section, the tax is measured by the gross receipts derived from ~~such~~the facility for the preceding month and is in the amount of ~~four and one-tenth~~two percent of ~~such~~its gross receipts. For purposes of this subsection, "gross receipts" of a

~~coal gasification plant do not include any amount that is received by the operator of the plant for production of synthetic natural gas in excess of one hundred ten million cubic feet per day. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.~~

SECTION 3. AMENDMENT. Section 57-60-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-60-02.1. Carbon dioxide capture credit - Reporting requirement.

A coal conversion facility that achieves a twenty percent capture of carbon dioxide emissions during a taxable period ~~after December 31, 2009~~, is entitled to a twenty percent reduction in the state general fund share of the tax imposed under section 57-60-02 during that taxable period. The facility is entitled to an additional reduction of one percent of the state general fund share of the tax imposed under section 57-60-02 for every additional two percentage points of its capture of carbon dioxide emissions. A maximum fifty percent reduction of the state general fund share of the tax imposed under section 57-60-02 is allowed for eighty percent or more capture of carbon dioxide emissions. A coal conversion facility may receive the reduction in coal conversion tax under this section for ten years from the date of first capture of carbon dioxide emission or for ten years from the date the coal conversion facility is eligible to receive the credit. A coal conversion facility that met the carbon dioxide capture requirements before January 1, 2017, may not claim the reduction under this section.

The operator of a coal conversion facility that receives a credit under this section shall report annually to the legislative council. The report must include:

1. An overview of the carbon dioxide capture project.
2. A status report on the current state of the carbon dioxide capture project, including data on the amount of carbon dioxide produced from the facility before the carbon dioxide capture project and the current carbon dioxide produced and captured from the facility.
3. Any recent changes to enhance the carbon dioxide capture system.
4. Information on the status of federal law and regulations related to the carbon dioxide capture project, including any benefits from the project realized by the operator under federal law and regulations.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 2017.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 406

SENATE BILL NO. 2330

(Senators Wanzek, Schaible, Sorvaag, Unruh)
(Representatives Headland, D. Johnson)

AN ACT to amend and reenact subsection 2 of section 57-39.5-01 of the North Dakota Century Code, relating to the definition of farm machinery; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-39.5-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" also includes machinery, equipment, and structural materials used directly and exclusively in, or incorporated into the structure of, a facility for the collection, handling, storage, heating, and cooling related to a milking operation of a dairy farm. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2017.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 407

SENATE BILL NO. 2112

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 5 of section 57-39.4-19 and sections 57-39.4-29 and 57-39.4-33.4 of the North Dakota Century Code, relating to uniform tax returns, the taxability matrix, and tax administration practices under the sales and use tax agreement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-39.4-19 of the North Dakota Century Code is amended and reenacted as follows:

5. Adopt a web services as the standardized transmission process to allow that allows for receipt of uniform tax returns and other formatted information as approved by the governing board. The process must provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, tax preparer, or any other authorized person to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.

SECTION 2. AMENDMENT. Section 57-39.4-29 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-29. (328) Taxability matrix.

1. a. To ensure uniform application of terms defined in part II and part III(B) of the library of definitions as adopted by the governing board under section 57-39.4-28, each member state shall complete, to the best of its ability, the section 4 of the taxability matrix titled "library of definitions".
- b. To inform the general public of its practices regarding certain ~~products, procedures, services, or transactions adopted~~ tax administration practices as selected by the governing board under section 57-39.4-33.4, each member state shall complete, to the best of its ability, the section 2 of the taxability matrix titled "tax administration practices".
2. The member state's entries in the taxability matrix shall be provided and maintained in a database that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.
3. A member state shall relieve sellers and certified service providers from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or

certified service provider relying on erroneous data provided by the member state in the library section of the taxability matrix. If a member state amends an existing provision of the library section of its taxability matrix, the member state shall, to the extent possible, relieve sellers and certified service providers from liability to the member state and its local jurisdictions until the first day of the calendar month that is at least thirty days after notice of change to a member state's library section of the taxability matrix is submitted to the governing board, provided the seller or certified service provider relied on the prior version of the taxability matrix.

4. To the extent possible, the member state shall relieve sellers and certified service providers from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the tax administration practices section of the taxability matrix. If a member state amends an existing provision of the tax administration practices section of its taxability matrix, the member state shall, to the extent possible, relieve sellers and certified service providers from liability to the member state and its local jurisdictions until the first day of the calendar month which is at least thirty days after notice of a change to a member state's tax administration practices section of the taxability matrix is submitted to the governing board, provided the seller or certified service provider relied on the prior version of the taxability matrix.
5. If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product under subsection 8 of section 57-39.4-33.1, such exemption must be noted in the library section of the taxability matrix.
- 5-6. Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a format approved by the governing board, give notice in the library section of the taxability matrix of the products for which a tax exemption is provided.

SECTION 3. AMENDMENT. Section 57-39.4-33.4 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-33.4. Best(335) Tax administration practices.

1. For purposes of this section, "~~best practices~~" means ~~those practices adopted by the governing board as the best practices in administration of the sales and use taxes in the member states regarding certain identified products, procedures, services, or transactions.~~ tax administration practices consist of the following:
 - a. "Disclosed practice", which means a tax practice that the governing board selects and requires each member state to disclose under subsection 2; and
 - b. "Best practice", which means is a disclosed practice selected by the governing board as a best practice under subsection 3.
2. ~~A majority vote of the entire governing board is required to approve a motion to adopt a best practices standard. The governing board shall select a disclosed practice using the following procedures:~~

- a. The state and local advisory council shall develop a practice for disclosure under the guidelines set forth in governing board rule 335.
 - b. The governing board shall provide public notice and opportunity for comment prior to voting on a motion to ~~adopt~~approve selection of a besttax practice for disclosure.
 - c. If a disclosed practice and a best practice are under concurrent development under rule 335, the governing board first shall vote on whether the practice is a disclosed practice before proceeding on a vote on whether the practice should be selected as a best practice.
 - d. A majority vote of the entire governing board is required to approve a motion to select a tax practice for disclosure.
3. The governing board shall select a best practice using the following procedures:
 - a. The state and local advisory council shall develop a best practice under the guidelines set forth in governing board rule 335 only from among the disclosed practices or from tax practices in concurrent development under subsection 2.
 - b. The governing board shall provide notice and opportunity for public comment before voting on a motion to approve selection of a best practice.
 - c. A three-fourths vote of the entire governing board is required to approve a motion to select a best practice.
 4. BestTax administration practices adopted by the governing board must be maintained in an appendix to the agreement.
- 4-5. Conformance by a member state to best practices adopted by the governing board is voluntary and a state may not be found to be out of compliance with the agreement because the effect of the state's laws, rules, regulations, and policies do not follow each of the best practices adopted by the governing board a tax administration practice. Following a tax administration practice is voluntary. All member states are encouraged to follow each best practice.
 - 5-6. AEach state shall complete the best practice matrix by the first day of the calendar month that is at least thirty days after the date the governing board approves a best practice and submits itsubmit to the executive director for posting on the governing board's website. For subsequent best practices approved by the governing board, a state shall update its best practice matrix the tax administration practices section of the taxability matrix by the first day of the calendar month thatwhich is at least thirtysixty days after the date the governing board approves a newmotion to select a disclosed or best practice and submits it to the executive director for posting on, or both, or the date specified by the governing board's websiteboard, whichever is later.
 7. Using the procedure for updating the taxability matrix, the executive director shall make the necessary updates to the taxability matrix template no later than thirty days after the date the governing board approves a motion to select a disclosed or best practice.

8. All best practices existing on May 11, 2015, are disclosed practices. The executive director shall implement this provision without changing any of the member states' responses.
9. A disclosed practice may subsequently be modified or become a best practice by following the provisions set forth in this section.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 408

SENATE BILL NO. 2298

(Senators Cook, Bekkedahl, Laffen)
(Representatives Dockter, Hatlestad, Headland)

AN ACT to create and enact a new section to chapter 57-39.2 and a new section to chapter 57-40.2 of the North Dakota Century Code, relating to sales and use tax collection obligations of certain out-of-state sellers; 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:

Certain sellers located outside this state required to collect and remit sales taxes - Criteria.

Notwithstanding any other provision of law, any seller of tangible personal property or other taxable product for delivery in this state, which does not have a physical presence in this state, is subject to this chapter and chapter 57-40.2 and shall remit sales or use tax. The seller shall follow all applicable procedures and requirements of law as if the seller has a physical presence in this state, if the seller meets either of the following criteria in the previous calendar year or the current calendar year:

1. The seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars; or
2. The seller sold tangible personal property and other taxable items for delivery in this state in two hundred or more separate transactions.

SECTION 2. A new section to chapter 57-40.2 of the North Dakota Century Code is created and enacted as follows:

Certain sellers located outside this state required to collect and remit sales taxes - Criteria.

Notwithstanding any other provision of law, any seller of tangible personal property or other taxable product for delivery in this state, which does not have a physical presence in this state, is subject to this chapter and chapter 57-39.2 and shall remit sales or use tax. The seller shall follow all applicable procedures and requirements of law as if the seller had a physical presence in this state, if the seller meets either of the following criteria in the previous calendar year or the current calendar year:

1. The seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars; or
2. The seller sold tangible personal property and other taxable items for delivery in this state in two hundred or more separate transactions.

SECTION 3. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the United States Supreme Court issues an opinion overturning *Quill v. North Dakota*, 504 U.S. 298 (1992), or otherwise confirming a state may constitutionally impose its sales or use tax upon an out-of-state seller in circumstances similar to those specified in section 1 of this Act.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 409

SENATE BILL NO. 2129

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; to amend and reenact subdivision ee of subsection 2 of section 12-60-24, sections 57-01-13 and 57-37.1-06, subsection 2 of section 57-39.2-11, and sections 57-39.2-27, 57-40.2-17, and 57-40.3-09 of the North Dakota Century Code, relating to criminal history record checks, alcoholic beverage gross receipts taxes, estate tax return filing requirements, sales and use taxes, and motor vehicle excise tax credits; to repeal section 57-39.2-24 of the North Dakota Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁴ **SECTION 1. AMENDMENT.** Subdivision ee of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

ee. The office of tax commissioner for all employees, final applicantapplicants for a specified occupationemployment with the tax commissioner as designated by the tax commissioner, and contractors with access to federal tax information.

SECTION 2. AMENDMENT. Section 57-01-13 of the North Dakota Century Code is amended and reenacted as follows:

57-01-13. (Contingent expiration date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and ~~business and corporation privilege~~alcoholic beverage gross receipts taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38, 57-39.2, and 57-40.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes, including penalties and

²⁰⁴ Section 12-60-24 was also amended by section 1 of House Bill No. 1060, chapter 94, section 1 of Senate Bill No. 2131, chapter 96, section 7 of Senate Bill No. 2327, chapter 199, section 1 of House Bill No. 1087, chapter 286, and section 1 of House Bill No. 1132, chapter 95.

interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment. The notices must be sent by first-class mail to the taxpayer at the taxpayer's last-known mailing address. The third notice must be sent with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes, including penalties and interest actually collected.
- b. All funds collected by the collection or credit agency must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner. The tax commissioner shall transfer the funds to the state treasurer for deposit in the state general fund. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract authorized by this section is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under the contract.
- c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and ~~business and corporation privilege~~ tax laws.

(Contingent effective date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and ~~business and corporation privilege~~alcoholic beverage gross receipts taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 and 57-39.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state,

for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment. The notices must be sent by regular mail to the taxpayer at the taxpayer's last-known mailing address. The third notice must be sent with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or ~~business and corporation privilege~~alcoholic beverage gross receipts taxes, including penalties and interest actually collected.
- b. All funds collected, less the fees for collection services, as provided in the contract, must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner.
- c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax ~~and business and corporation privilege~~ tax laws.

SECTION 3. AMENDMENT. Section 57-37.1-06 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-06. Estate tax return required - Tax commissioner to assess tax - District court to apportion federal and state estate taxes.

~~If an estate owes tax under this chapter, the~~ personal representative of ~~an~~the estate shall file with the tax commissioner the estate tax return required by this chapter. The tax commissioner shall assess the tax payable pursuant to the provisions of this chapter and furnish the personal representative with a statement thereof; if all or any part of the property included in the federal gross estate is being administered by the district court serving any county in this state, the tax commissioner shall also furnish a copy of the statement to that district court. The federal and North Dakota estate taxes must be apportioned as provided in section 30.1-20-16.

SECTION 4. AMENDMENT. Subsection 2 of section 57-39.2-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. ~~Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is allowed under this section if the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07. If the retailer's filing responsibility has been assumed by a certified service provider, the retailer may authorize the certified service provider to claim on behalf of the retailer all or part of the compensation to which the retailer is entitled under sections 57-39.2-12.1 and 57-40.2-07.1.~~

SECTION 5. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Claim for refund.

1. A taxpayer may file a claim for refund of tax that was not due, or for which a refund is authorized under this chapter or chapter 57-40.2. A refund claim must be filed in the manner provided in this section.
2. A taxpayer shall file a claim for refund with the tax commissioner within three years after the due date of the return or the date the return was filed, whichever is later.
3. For purposes of this section, "taxpayer" means a person who is required under this chapter or chapter 57-40.2 to file a return and who has remitted to the tax commissioner the tax for which a refund is claimed.

SECTION 6. AMENDMENT. Section 57-39.2-27 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-27. Disposition of excess tax collections.

~~Whenever a retailer has collected a sales tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer must be paid by the retailer to the tax commissioner in the quarterly return filed for the period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, as a credit against the retailer's sales tax liability on the next return that the retailer is required to file, the amount of sales tax properly refunded to the customer. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess must be allowed as a credit against future sales tax due from the retailer. If the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer file an amended return with the tax commissioner for the period the excess tax was collected and file a claim for refund.~~

SECTION 7. AMENDMENT. Section 57-40.2-17 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-17. Disposition of excess tax collections.

Whenever a retailer maintaining a place of business in this state has collected a use tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer must be paid by the retailer to the tax commissioner in the quarterly return filed for the period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, ~~as a credit against the retailer's use tax liability on the next return that the retailer is required to file, the amount of use tax properly refunded to the customer. In the event such deduction exceeds the amount of use tax due the state by the retailer in the next regular return, such excess must be allowed as a credit against future use tax due from the retailer. If the credit, or any part of it cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer~~ file an amended return with the tax commissioner for the period the excess tax was collected and file a claim for refund.

SECTION 8. 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 sales tax, use tax, or motor vehicle excise tax has been paid on a 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~~ in an amount equal to the difference ~~only~~ between the rate ~~fixed in~~ tax imposed by 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~~ paid in such the 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~~ the motor vehicle. The provisions of this section apply only if ~~such~~ the other state, or political subdivision thereof, allows a tax credit with respect to the excise tax imposed by this chapter which is substantially similar in effect to the credit allowed by this section. The tax commissioner may require the purchaser to provide written proof from the other state, or political subdivision thereof, that the tax was legally due and paid. 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 9. REPEAL. Section 57-39.2-24 of the North Dakota Century Code is repealed.

SECTION 10. EFFECTIVE DATE. This Act becomes effective July 1, 2017.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 410

SENATE BILL NO. 2200

(Senators Cook, Bekkedahl, Laffen)
(Representatives Owens, Rohr, Schreiber-Beck)

AN ACT to amend and reenact section 57-15-06.6, subsection 8 of section 57-15-10, and section 57-15-38 of the North Dakota Century Code, relating to capital project levies; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-06.6 of the North Dakota Century Code is amended and reenacted as follows:

57-15-06.6. County capital projects levy.

The board of county commissioners of each county may levy an annual tax not exceeding ten mills plus any voter-approved additional levy as provided in subsection 8 of section 57-15-06.7 for the purpose of the following capital projects:

1. Constructing and equipping and maintaining structural and mechanical components of regional or county corrections centers or for the purpose of contracting for corrections center space capacity from another public or private entity.
2. Acquiring real estate as a site for public parks and construction and equipping and maintaining structural and mechanical components of recreational facilities under section 11-28-06.
3. Acquiring real estate as a site for county buildings and operations and constructing and equipping and maintaining structural and mechanical components of county buildings and property.
4. Acquiring real estate as a site for county fair buildings and operations and constructing and equipping and maintaining structural and mechanical components of county fair buildings and property as provided in section 4-02-26.
5. Acquiring and developing real estate, capital improvements, buildings, pavement, equipment, and debt service associated with financing for county supported airports or airport authorities.
6. Expenditures for the cost of leasing as an alternative means of financing for any of the purposes for which expenditures are authorized under subsections 1 through 4.

Any voter-approved levy for the purposes specified in this section approved by the electors before January 1, 2015, remains effective through 2024 or the period of time for which it was approved by the electors, whichever is less, under the provisions of law in effect at the time it was approved. After January 1, 2015, approval or

reauthorization by electors of increased levy authority under this section may not be effective for more than ten taxable years.

SECTION 2. AMENDMENT. Subsection 8 of section 57-15-10 of the North Dakota Century Code is amended and reenacted as follows:

8. Taxes levied for a capital improvements fund approved by a majority of the electors of the city in accordance with section 57-15-38 for specified purposes may be levied in ~~an~~ specified amount not exceeding ten mills. Taxes levied for a capital improvements fund approved by sixty percent or more of the electors of the city in accordance with section 57-15-38 for general purposes may be levied in an amount not exceeding ten mills. Taxes levied for a capital improvements fund approved by sixty percent or more of the electors of the city in accordance with section 57-15-38 for specified purposes may be levied in ~~an~~ specified amount not exceeding an additional ten mills.

SECTION 3. AMENDMENT. Section 57-15-38 of the North Dakota Century Code is amended and reenacted as follows:

57-15-38. City capital improvements fund levy.

1. The governing body of any city may levy a tax for a capital improvements fund not exceeding ten mills under section 57-15-10, to be used for one of the purposes specified under subsection 5, when authorized to do so by a majority of the electors voting upon the question at a primary or general election.

~~When authorized by sixty percent or more of the qualified electors voting upon the question at a regular or special election in the city, the governing body of the city may levy and collect an additional tax of ten mills for capital improvements fund purposes under section 57-15-10. A ballot submitted to the electors under this subsection may contain multiple questions and each question must specify:~~

- a. The singular purpose, selected from the purposes specified under subsection 5, for which the levy authority is being sought;
 - b. The number of mills requested for the purpose specified in subdivision a; and
 - c. The duration of the requested levy authority.
2. The governing body of any city may levy a tax for a capital improvements fund not exceeding ten mills under section 57-15-10, to be used for any of the purposes specified under subsection 5, when authorized to do so by sixty percent or more of the qualified electors voting upon the question at a primary or general election.
 3. The governing body of any city may levy an additional tax for a capital improvements fund exceeding ten mills but not exceeding twenty mills under subsection 57-15-10, to be used for one of the purposes specified under subsection 5, when authorized to do so by sixty percent or more of the electors voting upon the question at a primary or general election. A ballot submitted to the electors under this subsection may contain multiple questions and each question must specify:

- a. The singular purpose, selected from the purposes specified under subsection 5, for which the levy authority is being sought;
 - b. The number of mills requested for the purpose specified in subdivision a; and
 - c. The duration of the requested levy authority.
4. Any excess levy for capital improvements under this section approved by the electors of a city before July 1, 2015, remains effective for ten taxable years or the period of time for which it was approved by the electors, whichever is less, after it was approved, under the provisions of law in effect at the time it was approved. After June 30, 2015, approval or reauthorization by electors of increased levy authority under this section may not be effective for more than ten taxable years.
5. The capital improvements fund ~~must~~may be used for paying:
- a. Paying all or part of the construction of waterworks systems, sewage systems, public buildings, or any other public improvements; ~~acquiring~~
 - b. Acquiring real estate as a site for public buildings, maintaining structural and mechanical components of public buildings, and furnishing of public buildings; a
 - c. A city's participating share in urban renewal programs; capital
 - d. Capital improvements and equipment acquisition and maintaining structural and mechanical components for fire department stations; ~~and capital~~
 - e. Capital improvements and equipment acquisition and maintaining structural and mechanical components for stations for police protection services and correctional facilities; and
 - f. Acquiring and developing real estate, capital improvements, buildings, pavement, equipment, and supporting debt service associated with financing for city-supported airports or airport authorities. The governing body of any city, when submitting to the electors of the city the question of authorizing the tax levy, shall specify the purposes for which the capital improvements fund is to be used.
6. The governing body of the city may create the capital improvements fund which may be accumulated in an amount not in excess of twenty percent of the current annual appropriation for all other purposes combined, exclusive of the appropriations to pay interest and principal of the bonded debt, and not in excess of the limitations prescribed by law.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2016.

Approved April 20, 2017

Filed April 21, 2017

CHAPTER 411

SENATE BILL NO. 2288

(Senators Cook, Laffen, Schaible)
(Representatives Headland, Howe, Olson)

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to a consolidated taxpayer notice containing estimated property tax levies and budget hearing information; to amend and reenact sections 11-23-04, 40-40-04, 40-40-06, 40-40-08, and 40-51.2-06, subdivision c of subsection 1 of section 40-51.2-07, sections 40-51.2-16, 57-02-53, 57-05-01, 57-05-01.1, 57-05-06, 57-05-07, 57-05-08, 57-06-06, 57-06-09, 57-06-11, 57-06-12, 57-06-15, 57-06-21, 57-13-02, and 57-15-13 of the North Dakota Century Code, relating to assessment increase notices and property tax levy public hearings, the dates for general taxation of land by a city, notices of dates of assessments and reports for centrally assessed property, the annual meeting of the state board of equalization, and dates for school district tax levies; to repeal sections 11-23-03 and 57-15-02.1 of the North Dakota Century Code, relating to notice of levy increases and public hearings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-23-04 of the North Dakota Century Code is amended and reenacted as follows:

11-23-04. Hearing on budget - Taxpayer may appear.

The board of county commissioners shall meet at the time and place designated in the notice prescribed by section ~~11-23-03~~²¹ of this Act. Any taxpayer who may appear shall be heard in favor of or against any proposed expenditures or tax levies. When the hearing shall have been concluded, the board shall adopt such estimate as finally is determined upon. All taxes shall be levied in specific amounts and shall not exceed the amount specified in the published estimates.

SECTION 2. AMENDMENT. Section 40-40-04 of the North Dakota Century Code is amended and reenacted as follows:

40-40-04. Municipality to prepare preliminary budget statement.

The governing body of each municipality, annually on or before ~~September~~^{August} tenth, shall make an itemized statement known as the preliminary budget statement showing the amounts of money which, in the opinion of the governing body, will be required for the proper maintenance, expansion, or improvement of the municipality during the year.

SECTION 3. AMENDMENT. Section 40-40-06 of the North Dakota Century Code is amended and reenacted as follows:

40-40-06. Notice of preliminary budget statement - Contents - How given.

After

1. ~~On or before August tenth of each year, after the governing body has prepared the preliminary budget statement, the auditor of the municipality shall give notice that:~~
1. ~~The preliminary budget is on file in the office of the auditor and may be examined by anyone upon request.~~
2. ~~The governing body shall meet~~
 - a. ~~Provide the county auditor with a copy of the preliminary budget statement.~~
 - b. ~~Set a public budget hearing date no earlier than September seventh and no later than October seventh at the time and place specified in the notice as prescribed by subsection 3 for the purpose of adopting the final budget and making the annual tax levy.~~
3. ~~The governing body shall hold a public session at the time and place designated in the notice of hearing at which any taxpayer may appear and discuss with the body any item of proposed expenditures or may object to any item or amount.~~

The

- c. ~~Provide notice of the public budget hearing date to the county auditor.~~
2. ~~For municipalities anticipating levying less than one hundred thousand dollars in the current year, notice must contain:~~
 - a. ~~Contain a statement of the total proposed expenditures for each fund in the preliminary budget, but need not contain any detailed statement of the proposed expenditures. The notice must be:~~
 - b. ~~Be published at least once, not less than six days prior to the budget hearing, in a newspaper published in the municipality, if there is one, and if no newspaper is published in the municipality, the notice must be published not less than six days prior to the meeting in the official city newspaper as provided by section 40-01-09; and~~
 - c. ~~Provide that any taxpayer may appear and discuss with the governing body any item of proposed expenditures or may object to any item or amount.~~

SECTION 4. AMENDMENT. Section 40-40-08 of the North Dakota Century Code is amended and reenacted as follows:

40-40-08. Hearing of protests and objections - Changes in preliminary budget - Preparation of final budget - Contents.

The governing body shall meet at the time and place specified in the notice set pursuant to section 40-40-06 and shall hear any and all protests or objections to the items or amounts set forth in the preliminary budget statement. At the hearing, the governing body shall make any changes in the items or amounts shown on the preliminary budget statement as it may deem advisable except as limited in this chapter, and shall prepare the final budget, which must consist of the preliminary budget with the addition of columns showing:

1. The final appropriations for the various expenditure items specified in the preliminary budget statement. The final appropriation of any fund total may not exceed the total amount requested in the preliminary budget.
2. The estimated amount of unencumbered cash on hand at the end of the current year may not include cash or investments of the equipment replacement fund as provided in section 40-40-05.
3. The levy amount determined by subtracting the total resources from the total appropriations and cash reserve for each fund. The governing body may increase the levy an additional five percent for delinquent tax collections.
4. The certificate of levy which includes a summary of the amount levied for each fund and the total amount levied.

SECTION 5. AMENDMENT. Section 40-51.2-06 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-06. Petition of owners and electors - Annexation or exclusion - Classification of annexed agricultural lands for tax purposes.

If the governing body annexes the area, it shall do so by ordinance. When a copy of the ordinance 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. An annexation is effective for the purpose of general taxation on and after the first day of the next ~~February~~January. 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. If the governing body determines to exclude the area petitioned for, it may do so by ordinance adopted and recorded as in the case of annexation.

SECTION 6. AMENDMENT. Subdivision c of subsection 1 of section 40-51.2-07 of the North Dakota Century Code is amended and reenacted as follows:

- 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~~January. 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.

SECTION 7. AMENDMENT. Section 40-51.2-16 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-16. Effective date of annexation by administrative law judge - Classification of annexed agricultural lands for tax purposes.

Territory annexed to a city pursuant to petition to the director of the office of administrative hearings is annexed as of the date of the order of the administrative law judge, except for tax purposes, and a copy of the resolution with an accurate map

of the annexed area, certified by the executive officer of the city, must be filed and recorded with the county recorder. Annexation is effective for the purpose of general taxation on and after the first day of the next ~~February~~ January. 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.

SECTION 8. AMENDMENT. Section 57-02-53 of the North Dakota Century Code is amended and reenacted as follows:

57-02-53. Assessment increase notice to property owner.

1. a. When any assessor has increased the true and full valuation of any lot or tract of land and improvements to an amount that is an increase of three thousand dollars or more and ten percent or more from the amount of the previous year's assessment, the assessor shall deliver written notice of the amount of increase and the amount of the previous year's assessment to the property owner at the expense of the assessment district for which the assessor is employed. Delivery of written notice to a property owner under this subdivision must be completed at least fifteen days before the meeting of the local board of equalization.
 - b. If written notice by the assessor was not required under subdivision a and action by the township, city, or county board of equalization or order of the state board of equalization has increased the true and full valuation of any lot or tract of land and improvements to an amount that results in a cumulative increase of three thousand dollars or more and ten percent or more from the amount of the previous year's assessment, written notice of the amount of increase and the amount of the previous year's assessment must be delivered to the property owner. The written notice under this subdivision must be mailed or delivered at the expense of the township, city, or county that made the assessment increase or at the expense of the township, city, or county that was ordered to make the increase by the state board of equalization. Delivery of written notice to a property owner under this subdivision must be completed within fifteen days after the meeting of the township, city, or county board of equalization that made or ordered the assessment increase and within thirty days after the meeting of the state board of equalization, if the state board of equalization ordered the assessment increase.
 - c. The tax commissioner shall prescribe suitable forms for written notices under this subsection. The written notice under subdivision a must show the true and full value of the property, including improvements, that the assessor determined for the current year and for the previous year and must also show the date prescribed by law for the meeting of the local board of equalization of the assessment district in which the property is located and the meeting date of the county board of equalization.
 - d. Delivery of written notice under this section must be by personal delivery to the property owner, mail addressed to the property owner at the property owner's last-known address, or electronic mail to the property owner directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice.
2. The form of notice prescribed by the tax commissioner must require a statement to inform the taxpayer that an assessment increase does not mean

property taxes on the parcel will increase. ~~The notice must state that each taxing district must provide mailed notice of public hearing to the property owner if a greater property tax levy is being proposed than a zero increase number of mills. The notice may not contain an estimate of a tax increase resulting from the assessment increase.~~

3. ~~The assessor shall provide an electronic or printed list including the name and address of the addressee of each assessment increase notice required under subdivision a of subsection 1 and the officer responsible for providing notice under subdivision b of subsection 1 shall provide an electronic or printed list including the name and address of the addressee of each assessment increase notice required under subdivision b of subsection 1 to each city, county, school district, or city park district in which the subject property is located, but a copy does not have to be provided to any such taxing district that levied a property tax levy of less than one hundred thousand dollars for the prior year.~~

SECTION 9. AMENDMENT. Section 57-05-01 of the North Dakota Century Code is amended and reenacted as follows:

57-05-01. Railroad property to be assessed by state board of equalization.

The state board of equalization, at its annual meeting in ~~August~~July in each year, shall assess, at its actual value on the first day of January of that year, the operating property, including franchises, of each railroad operated in this state, including any electric or other street or interurban railway. If any railroad allows any portion of its railway to be used for any purpose other than the operation of a railroad, the portion of its railway while so used must be assessed in a manner provided for the assessment of other real property. To enable the board to make a correct valuation of property, it shall have access to all reports, estimates, and surveys of a line of railroad on file in the office of the public service commission and has power to summon and compel the attendance of witnesses, and to examine witnesses under oath in any matter relating to the value of the property. In fixing the value of any railroad, and of branch lines and sidetracks, the board must be governed by the rules prescribed for county and township assessors in valuing other property in this state. The board shall make a record of the value placed by it upon the property of the railroad, including the valuation per mile [1.61 kilometers] of main line and of branch lines and sidetracks. Railroad property held in trust by the public service commission for purposes of reorganization or reopening of the railway line is exempt from assessment as provided in this section.

SECTION 10. AMENDMENT. Section 57-05-01.1 of the North Dakota Century Code is amended and reenacted as follows:

57-05-01.1. Tentative assessment - Notice of hearing.

1. The tax commissioner, on or before ~~July~~June fifteenth of each year, shall ascertain and determine the value of, and a tentative assessment of, all operative property of any company required to be assessed under the provisions of this chapter. ~~Such~~The determination of value must be made for the guidance of the state board of equalization in assessing ~~such~~the property at its annual meeting in ~~August~~July. In making ~~such~~this determination of value, the tax commissioner must be governed by the rules ~~laid down by~~provided in this chapter.

2. The tax commissioner shall give ten days' notice by mail to each company, or its representative in North Dakota, of the amount of its tentative assessment; ~~and shall appoint a time and place between the meeting of the state board of equalization on the firstsecond~~ Tuesday of ~~August and the first day of September~~July, at which meeting each company is entitled to present evidence before the state board of equalization relating to the value of the property of the company.

SECTION 11. AMENDMENT. Section 57-05-06 of the North Dakota Century Code is amended and reenacted as follows:

57-05-06. County auditor to send maps to railroad corporation.

The county auditor of each county in the state shall ~~mail~~provide to each railroad corporation doing business in that county, on or before the first day of ~~March~~February of each year, an accurate map of the county showing the boundaries of each assessment district.

SECTION 12. AMENDMENT. Section 57-05-07 of the North Dakota Century Code is amended and reenacted as follows:

57-05-07. Railroad shall file information with county auditor.

Every railroad corporation, on or before the fifteenth day of ~~February~~January in each year, shall file in the office of the county auditor of each county in the state in which ~~said~~the company's lines are located:

1. The name of the corporation.
2. The principal place of doing business.
3. The names and post-office addresses of the president, secretary, and treasurer of the corporation.

SECTION 13. AMENDMENT. Section 57-05-08 of the North Dakota Century Code is amended and reenacted as follows:

57-05-08. Report by railroad corporation to state tax commissioner.

Each railroad corporation required to be assessed under the provisions of this chapter annually shall, on or before ~~May~~April first of each year, under oath of the presiding or other chief executive officer, make and file ~~in such~~on the form and in the manner as the tax commissioner may prescribe a report containing the following information:

1. The name of the company;
2. The laws of what state or country organized, the date of original organization, the date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same;
3. Location of its principal office;
4. The name of the place where its books, papers, and accounts are kept;
5. The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers;

6. The name and post-office address of the chief officer or managing agent of the company in North Dakota and of all other general officers residing in this state;
7. The total number of shares of capital stock;
8. The par value of the shares of the capital stock for the whole system, showing separately the amount authorized, amount issued, amount outstanding, and dividends paid thereon;
9. If such capital stock has no market value, the actual value on the dates and for the periods designated by the tax commissioner of this state;
10. The funded debt of the company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt, at par value, with the date of issue, maturity, rate of interest, and amount of interest for the preceding year;
11. The market value of each series of funded debt securities for the whole system on the dates and for the periods designated by the tax commissioner, and if the whole or a part of ~~such~~the funded debt has no market value, then the actual value thereof for ~~such~~the dates and periods as the tax commissioner may specify;
12. Such general description of the operative and nonoperative real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the said property;
13. A description of the personal property of the company;
14. The number of miles [kilometers] of each main line of railroad, the number of miles [kilometers] of each branch line and sidetracks thereof within the state of North Dakota;
15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years;
16. The location of the property of the company within this state by counties, municipalities, and districts, in ~~such~~the manner and ~~in such~~ detail as the tax commissioner shall prescribe; and
17. ~~Such other~~Other facts and information as the tax commissioner may require in the form of returns prescribed by the tax commissioner or which the company may deem material upon the question of taxation of its property in this state.

SECTION 14. AMENDMENT. Section 57-06-06 of the North Dakota Century Code is amended and reenacted as follows:

57-06-06. Reports of companies.

Each company required to be assessed under the provisions of this chapter annually, on or before the ~~first~~fifteenth day of ~~May~~April, under oath of the president or other chief executive officer, and the secretary or treasurer or auditor or superintendent of such company, shall make and file with the tax commissioner, in

such the form as the tax commissioner may prescribe, a report containing the following information, so far as applicable to the company making such the report, as of January first of the year in which the report is furnished:

1. The name of the company.
2. The nature of the company, whether a person, association, corporation, or limited liability company, and under the laws of what state or country organized, the date of original organization, the date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same.
3. Location of its principal office.
4. The name of the place where its books, papers, and accounts are kept.
5. The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers.
6. The name and post-office address of the chief officer or managing agent of the company in North Dakota and of all other general officers residing in this state.
7. The total number of shares of capital stock.
8. The par value of the shares of the capital stock for the whole system, showing separately the amount authorized, amount issued, amount outstanding, and dividends paid thereon.
9. If such the capital stock has no market value, the actual value on the dates and for the periods designated by the tax commissioner of this state.
10. The funded debt of the company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt, at par value, with the date of issue, maturity, rate of interest, and amount of interest for the preceding year.
11. The market value of each series of funded debt securities for the whole system on the dates and for the periods designated by the tax commissioner, and if the whole or a part of such the funded debt has no market value, then the actual value thereof for such the dates and periods as the tax commissioner may specify.
12. Such The general description of the operative and nonoperative real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the said property.
13. A description of the personal property, including moneys and credits, held by the company as a whole system, and the part thereof apportioned to the line in North Dakota.
14. The whole length of the lines of the system operated by the company and the length of the lines in North Dakota, whether operated as owner, lessee, or otherwise. The length of the line operated for the whole system and in North Dakota shall be separately reported.

15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years.
16. The location of the property of the company within this state by counties, municipalities, and districts, in ~~such~~the manner and in ~~such~~ detail as the tax commissioner shall prescribe.
17. Other facts and information as the tax commissioner may require or which the company may deem material relating to the taxation of its property in this state.

SECTION 15. AMENDMENT. Section 57-06-09 of the North Dakota Century Code is amended and reenacted as follows:

57-06-09. Penalty for failure to furnish report.

If any company refuses or neglects to make the report required by this chapter or refuses or neglects to furnish any information requested, the tax commissioner shall obtain the best information available on the facts necessary to be known in order to discharge the tax commissioner's duties with respect to the valuation and assessment of the property of the company. If any company fails to make the report required under this chapter on or before the ~~first~~fifteenth day of ~~May~~April of any year, the state board of equalization shall add ~~ten~~twenty percent to the assessed value of the property of the company for that year, but the tax commissioner, upon written application received on or before the ~~first~~fifteenth day of ~~May~~April, may grant an extension of time through the first day of ~~June~~May to file the required report. If any company fails to make the report required under this chapter on or before the first day of ~~July~~June of any year, the state board of equalization shall add an additional ten percent to the assessed value of the property of the company for that year. On or before the ~~fifteenth~~first day of ~~July~~June, for good cause shown, the tax commissioner may waive all or any part of the penalty that attached under this section.

SECTION 16. AMENDMENT. Section 57-06-11 of the North Dakota Century Code is amended and reenacted as follows:

57-06-11. Tentative valuation by tax commissioner.

The tax commissioner, on or before ~~July~~June ~~fifteenth~~ of each year, shall ascertain and determine the value of all operative property of any company required to be assessed under the provisions of this chapter. ~~Such~~This determination of value must be made for the guidance of the state board of equalization in assessing ~~such~~the property at its annual meeting in ~~August~~July. In making ~~such~~the determination of value, the tax commissioner must be governed by the rules ~~laid down by~~provided in this chapter and by ~~such directions as may be~~direction given to the tax commissioner by the state board of equalization.

SECTION 17. AMENDMENT. Section 57-06-12 of the North Dakota Century Code is amended and reenacted as follows:

57-06-12. Tentative assessment to be made and notice of hearing.

The tax commissioner shall give ten days' notice by mail to each company, or its representative in North Dakota, of the amount of its tentative assessment and ~~shall appoint a time and place, between~~the meeting of the state board of equalization on the ~~first~~second Tuesday of ~~August and the first day of September~~July, at which

meeting each company is entitled to present evidence before the state board of equalization relating to the value of the property of the company.

SECTION 18. AMENDMENT. Section 57-06-15 of the North Dakota Century Code is amended and reenacted as follows:

57-06-15. Assessment by state board of equalization - Notice of increase.

The state board of equalization may adopt the tentative assessment of the tax commissioner in whole or in part. The valuation and tentative assessments made by the tax commissioner must be considered merely findings of fact of the executive officer of the board. The state board of equalization shall review ~~such~~the valuation and tentative assessment at the time of its annual meeting in ~~August~~July of each year and then shall make a final assessment of ~~such~~the property. It may increase or lower the entire assessment, or any assessment contained therein, on any item contained within the assessment of any company. Before the state board of equalization may make an increase in the assessed valuation of the property of any ~~such~~the company over the valuation contained in the tentative assessment, notice must be given to the company of any ~~such~~the proposed increase and a hearing granted thereon. A ten-day written notice of the proposed increase and hearing must be given to the company in ~~such~~ instance, either by mail addressed to the company, or personally served on a duly authorized agent of the company.

SECTION 19. AMENDMENT. Section 57-06-21 of the North Dakota Century Code is amended and reenacted as follows:

57-06-21. Reports to county auditors.

On or before the fifteenth day of ~~March~~February of each year, each company required to be assessed under this chapter shall file with the county auditor of each county within which any part of its operative property is located a report giving a general description of all its property located within the county, with operative and nonoperative property listed separately. The report must give the length of the line or lines within the county and the length in each taxing district of each line constituting part of a single and continuous line or property. The company also shall file with the county auditor and the tax commissioner a map of all of its lines within the county showing clearly the length of its lines within each taxing district as of ~~January~~ first of that year. To facilitate the making of the maps, the county auditor, on or before the first day of ~~February~~January of each year, shall provide to each company a current map of the county showing the boundaries of each taxing district in the county.

SECTION 20. AMENDMENT. Section 57-13-02 of the North Dakota Century Code is amended and reenacted as follows:

57-13-02. Annual meeting to assess taxable property.

The state board of equalization shall meet annually on the ~~first~~second Tuesday in ~~August~~July at the office of the state tax commissioner and shall assess all of the taxable property which such board is required to assess pursuant to and in accordance with the provisions of section 4 of article X of the Constitution of North Dakota, as amended, and the statutes of this state.

SECTION 21. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Estimated property tax and budget hearing notice.

1. On or before August tenth of each year the governing body of a taxing district shall provide to the county auditor in each county in which the taxing district has taxable property a preliminary budget statement and the date, time, and location of the taxing district's public hearing on its property tax levy, which may be no earlier than September seventh. A taxing district that fails to provide the information required under this subsection on or before August tenth may not impose a property tax levy in a greater amount of dollars than was imposed by the taxing district in the prior year.
2. By August thirty-first of each year the county treasurer shall provide a written notice to the owner of each parcel of taxable property with a total estimated property tax of at least one hundred dollars. The text of the notice must contain:
 - a. The date, time, and location of the public budget hearing for each of the taxing districts in which the property owner's parcel is located, which anticipate levying in excess of one hundred thousand dollars in the current year, and the location at which the taxing district's budget is available for review;
 - b. The true and full value of the property based on the best information available;
 - c. A column showing the actual property tax levy in dollars against the parcel by the taxing district that levied taxes against the parcel in the immediately preceding taxable year and a column showing the estimated property tax levy in dollars against the parcel by the taxing district levying tax in the taxable year for which the notice applies based on the preliminary budget statements of all taxing jurisdictions;
 - d. A column indicating the difference between the taxing district's total levy from the previous year and the taxing district's estimated levy with the word "INCREASE" printed in boldface type if the proposed tax levy is larger in dollars than the levy in dollars in the previous year;
 - e. Information identifying the estimated property tax savings that will be provided pursuant to section 57-20-07.1 based on the best information available; and
 - f. A statement that there will be an opportunity for citizens to present oral or written comments regarding each taxing district's property tax levy.
3. Delivery of written notice under this section must be by personal delivery to the property owner, mail addressed to the property owner at the property owner's last-known address, or electronic mail to the property owner directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice. If a parcel of taxable property is owned by more than one owner, notice must be sent to only one owner of the property. Failure of an owner to receive a notice under this section will not relieve the owner of property tax liability or modify the qualifying date under section 57-20-09 for which an owner may receive a discount for early payment of tax.
4. The tax commissioner shall prescribe suitable forms for written notices under this section.

5. The direct cost of providing taxpayer notices under this section may be allocated in a manner proportionate to the number of notices mailed on behalf of each taxing district that intends to levy in excess of one hundred thousand dollars in property taxes in the current year.

SECTION 22. AMENDMENT. Section 57-15-13 of the North Dakota Century Code is amended and reenacted as follows:

57-15-13. School district tax levies.

School district taxes must be levied by the governing body of each school district on or before the ~~fifteenth~~^{tenth} day of August of each year. The governing body of the school district may amend its tax levy and budget for the current fiscal year on or before the tenth day of October of each year but the certification must be filed with the county auditor within the time limitations under section 57-15-31.1. Taxes for school district purposes must be based upon an itemized budget statement which must show the complete expenditure program of the district for the current fiscal year and the sources of the revenue from which it is to be financed. The school board of each public school district, in levying taxes, is limited by the amount necessary to be raised for the purpose of meeting the appropriations included in the school budget of the current fiscal year, and the sum necessary to be provided as an interim fund, together with a tax sufficient in amount to pay the interest on the bonded debt of the district and to provide a sinking fund to pay and discharge the principal thereof at maturity.

SECTION 23. REPEAL. Sections 11-23-03 and 57-15-02.1 of the North Dakota Century Code are repealed.

SECTION 24. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2017.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 412

SENATE BILL NO. 2157

(Senators Campbell, Kreun, Roers, Rust)
(Representatives Monson, D. Ruby)

AN ACT to amend and reenact subsection 2 of section 57-02-11 of the North Dakota Century Code, relating to election by a city having a class I assessor to maintain its property assessment records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-02-11 of the North Dakota Century Code is amended and reenacted as follows:

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 an assessor who holds a current certification as a class I assessor under section 57-02-01.1, and which has been determined by the state supervisor of assessments to have enough sales for an adequate sales ratio study, 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.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 413

SENATE BILL NO. 2283

(Senators Cook, Laffen, Dotzenrod)
(Representatives Grueneich, Headland, Nathe)

AN ACT to create and enact a new section to chapter 57-01 of the North Dakota Century Code, relating to denial of tax incentives to taxpayers delinquent on the payment of state or local taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted as follows:

Tax incentives - State and local tax clearance.

1. A person may not claim a state or local tax incentive identified in section 54-35-26, unless the person has satisfied all state and local tax obligations and tax liens of record for taxes owed to the state or a political subdivision.
2. A person claiming a state tax incentive shall attach to the return or other filing schedule on which the tax incentive is claimed, a property tax clearance record from each county in which the person has a fifty percent or more ownership interest in the property.
3. A city or county may not grant a local tax incentive unless the person requesting the tax incentive is not delinquent on any property taxes and the person provides a state tax clearance record. A property tax clearance is required for property in which the person has a fifty percent or more ownership interest.
4. If a tax incentive applicant or claimant is a corporation or passthrough entity, any of the corporation's or passthrough entity's officers, governors, managing members, or partners charged with the responsibility for filing and paying property, income, income withholding, sales, or use tax are subject to the provisions of subsections 2 and 3.
5. If a person fails to comply with this section, the tax commissioner shall disallow that person's state tax exemption or credit claimed under any law authorizing the tax commissioner to audit and assess the additional tax due.

SECTION 2. EFFECTIVE DATE. This Act is effective for tax incentives claimed or granted after July 31, 2017.

Approved April 3, 2017

Filed April 4, 2017

TOWNSHIPS

CHAPTER 414

SENATE BILL NO. 2205

(Senators J. Lee, Kannianen, Dotzenrod)
(Representatives Klemin, K. Koppelman, Zubke)

AN ACT to amend and reenact section 58-04-05 of the North Dakota Century Code, relating to compensation of township elections workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-04-05 of the North Dakota Century Code is amended and reenacted as follows:

58-04-05. Organization of annual or special meetings.

The qualified electors present on the day of the annual or special meeting must be called to order by the township clerk, or, if the township clerk is not present, the qualified electors may elect by acclamation one of their number to act as chairman for the purpose of calling the meeting to order and to act as clerk after the selection of a moderator. The qualified electors shall elect by acclamation three of their number as judges, and such judges must be sworn and shall act as the judges of the qualifications of the qualified electors of the township. The qualified electors shall proceed to choose one of their number to preside as moderator of the meeting. The township clerk, if present, or in the township clerk's absence, the clerk of the meeting, shall keep full minutes of its proceedings in which must be entered at length every order, direction, rule, and regulation made by the meeting. Meeting and voting hours of an annual or special meeting are optional with the township board, provided proper notice is given under the provisions of this chapter. The positions of moderator, clerk, and the three judges must be separate and distinct positions and no such positions may be held by the same person. The moderator, clerk, and the three judges each may be entitled to a ~~salary~~compensation of no more than ~~fifteensixty~~ dollars per day for each day actually expended in the performance of their duties. Such salary must be paid out of township funds made available for such purpose. However, in those townships in which the offices of township clerk and treasurer have been merged, the person holding such office shall receive compensation as provided by law as township treasurer only and may not receive additional compensation for duties as clerk.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 415

HOUSE BILL NO. 1322

(Representatives D. Anderson, Beadle, C. Johnson, J. Nelson)
(Senators Robinson, Vedaa)

AN ACT to create and enact section 58-18-08 of the North Dakota Century Code, relating to township bonding authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 58-18-08 of the North Dakota Century Code is created and enacted as follows:

58-18-08. Financing of special improvements - Procedure.

When it is proposed to finance in whole or in part the construction of a project with funds raised through the collection of special assessments, the township has the authority granted to municipalities in chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, 40-27, and 40-28, and the township shall comply with the provisions of those chapters regarding the issuance and sale of warrants and bonds for financing improvements. Whenever action is required of city officials in those chapters, the comparable township officials shall take the action.

Approved March 29, 2017

Filed March 30, 2017

TRUSTS

CHAPTER 416

HOUSE BILL NO. 1228

(Representative K. Koppelman)
(Senator Armstrong)

AN ACT to create and enact sections 59-04.2-03.1 and 59-09-04.1, chapter 59-10.1, section 59-14-05, and chapters 59-16.1, 59-16.2, and 59-16.3 of the North Dakota Century Code, relating to actions to contest the validity of a trust, trust decanting, and directed trustees; to amend and reenact sections 47-02-27.4, 59-04.2-03, and 59-16-13 of the North Dakota Century Code, relating to exclusions from the rule against perpetuities and a trustee's duty to inform; to repeal sections 59-14-01, 59-14-04, and 59-16-08 of the North Dakota Century Code, relating to the capacity of a settlor of a revocable trust, actions contesting the validity of a trust, and powers to direct a trustee; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁵ **SECTION 1. AMENDMENT.** Section 47-02-27.4 of the North Dakota Century Code is amended and reenacted as follows:

47-02-27.4. Exclusions from statutory rule against perpetuities.

Section 47-02-27.1 does not apply to:

1. A contingent property interest or a power of appointment arising out of a nondonative transfer, except a contingent property interest or a power of appointment arising out of a premarital or postmarital agreement, a separation or divorce settlement, a spouse's election, a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, a contract to make or not to revoke a will or trust, a contract to exercise or not to exercise a power of appointment, a transfer in satisfaction of a duty of support, or a reciprocal transfer.
2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.
3. A power to appoint a fiduciary.
4. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.

²⁰⁵ Section 47-02-27.4 was also amended by section 24 of House Bill No. 1015, chapter 14.

5. A contingent property interest held by a charity, government, or governmental agency or subdivision, if the contingent property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.
6. A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or excluded by another statute of this state.
7. Except to the extent otherwise provided in the governing instrument of a business trust, a business trust has perpetual existence, and a business trust may not be terminated or revoked by a beneficial owner or other person except in accordance with the terms of its governing instrument. A business trust, whether domestic or foreign, may not own any interest in real property within this state.

SECTION 2. AMENDMENT. Section 59-04.2-03 of the North Dakota Century Code is amended and reenacted as follows:

59-04.2-03. (104) Trustee's power to adjust.

1. A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in subsection 1 of section 59-04.2-02 that the trustee is unable to comply with subsection 1 of section 59-04.2-02.
 - a. The discretionary power of a trustee to adjust under this section may not be interpreted to include an obligation to evaluate a trust for possible adjustment between principal and income.
 - b. A trustee's inaction is presumed to be a good faith determination not to exercise the power to adjust.
2. In deciding whether and to what extent to exercise the power conferred by subsection 1, a trustee may consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent relevant:
 - a. The nature, purpose, size, and expected duration of the trust;
 - b. The intent of the settlor;
 - c. The identity and circumstances of the beneficiaries;
 - d. The needs for liquidity, regularity of income, and preservation and appreciation of capital;
 - e. The assets held in the trust, the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

- f. The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
 - g. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
 - h. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and
 - i. The anticipated tax consequences of an adjustment.
3. A trustee may not make an adjustment:
- a. That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
 - b. That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
 - c. That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
 - d. From an amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;
 - e. If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;
 - f. If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;
 - g. If the trustee is a beneficiary of the trust; or
 - h. If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.
4. If subdivisions e, f, g, or h of subsection 3 apply to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

5. A trustee may release the entire power conferred by subsection 1 or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivision a through f, or h of subsection 3 or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection 3. The release may be permanent or for a specified period, including a period measured by the life of an individual.
6. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection 1.

SECTION 3. Section 59-04.2-03.1 of the North Dakota Century Code is created and enacted as follows:

59-04.2-03.1. Judicial control of discretionary power.

1. The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this chapter unless the court determines that the decision was not made in good faith or was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.
2. The decisions to which subsection 1 applies include:
 - a. A decision under subsection 1 of section 59-04.2-03 as to whether and to what extent an amount should be transferred from principal to income or from income to principal.
 - b. A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by subsection 1 of section 59-04.2-03.
3. If the court determines a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:
 - a. To the extent the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.
 - b. To the extent the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

- c. To the extent the court is unable, after applying subdivisions a and b to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.
4. Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, then a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

SECTION 4. Section 59-09-04.1 of the North Dakota Century Code is created and enacted as follows:

59-09-04.1. Settlor's capacity.

The capacity required of a settlor is the same as that required to make a will and is required to create, amend, revoke, or add property to a trust, to direct the actions of the trustee where permitted, and to exercise powers and rights, if any, reserved or granted to the settlor under the terms of the trust or applicable law.

SECTION 5. Chapter 59-10.1 of the North Dakota Century Code is created and enacted as follows:

59-10.1-01. Declaratory judgment.

A person seeking to challenge the validity of a trust instrument or amendment may institute a proceeding under this chapter for a declaratory judgment of invalidity.

59-10.1-02. Parties - Process.

A settlor who is not a plaintiff, a beneficiary named in the trust, and a settlor's present intestate successors must be included as parties to the proceeding. For the purposes of this chapter, a beneficiary named in the trust and the settlor's present intestate successors are deemed to possess inchoate property rights. Service of process upon the parties to the proceeding must be made in accordance with rule 4 of the North Dakota Rules of Civil Procedure.

59-10.1-03. Limitation of action.

A proceeding under this chapter may not be commenced later than the earliest of the following:

1. One hundred twenty days after the date the trustee notified the individual contesting the trust of the trust's existence or amendment. The notice must include the trustee's name and address and a copy of the trust instrument with amendments, if any, and must inform the recipient of the time allowed under this section for initiating a proceeding to contest the trust. A trustee may not have any liability under the governing instrument, to a third party, for failure to provide a notice under this subsection. Service of this notice is presumed to

have been received upon delivery of the notice to the last known address of the individual to whom the notice is addressed:

2. Three years after the settlor's death;
3. If the trust was revocable immediately before the settlor's death and the trust was specifically referred to in the settlor's last will, then the time in which a petition for review of a will could be filed under state law; or
4. The date an individual's right to contest was precluded by adjudication, consent, or other limitation.

59-10.1-04. Findings.

If the court finds the settlor has executed the trust instrument and had the requisite capacity, the court shall declare the trust to be valid. An adjudication that a trust is valid is binding on the parties. If the court finds a trust or amendment to be invalid, the challenged trust or amendment is ineffective as of a date and to the extent determined by the court.

59-10.1-05. Distributions by trustee - Return of distribution determined to be invalid.

1. The trustee may proceed to distribute the trust property in accordance with the terms of the trust. This distribution may be made without liability unless the trustee has actual knowledge of a pending proceeding to contest the validity of the trust, or is notified by a potential contestant of a possible contest, followed by service of process upon the trustee for that proceeding within thirty days of the notification of a possible contest.
2. The court may order the revocation of a distribution made under the authority of a trust or amendment that is subsequently determined to be invalid and may order the recipient of an invalid distribution to return the distribution.

SECTION 6. Section 59-14-05 of the North Dakota Century Code is created and enacted as follows:

59-14-05. Settlor's powers to direct.

While a trust is revocable, the trustee may follow a direction of the settlor which is contrary to the terms of the trust.

SECTION 7. AMENDMENT. Section 59-16-13 of the North Dakota Century Code is amended and reenacted as follows:

59-16-13. (813) Duty to inform and report.

1. Subject to section 59-14-03, while a trust is revocable or to the extent that trust property in an irrevocable trust is subject to a power of withdrawal, or to the extent that the qualified beneficiary of an irrevocable trust is then unknown because a person holds a power to change the qualified beneficiary, the duty of the trustee as set forth in subsection 2, to inform and report are owed exclusively:
 - a. To the settlor, while a trust is revocable;

- b. To the holder of the power of withdrawal to the extent the trust property is subject to the power during the period in which the power may be executed; and
 - c. To the holder of the power to change the qualified beneficiary of an irrevocable trust during the period in which the power may be exercised; and
 - d. To a qualified beneficiary when the qualified beneficiary is required by law or regulation to provide that information to determine eligibility for benefits or to verify continued eligibility for benefits under title 50.
2. With respect to trust property in an irrevocable trust which is not subject to a power of withdrawal and which is not subject to a power to change the qualified beneficiary:
- a. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.
 - b. A trustee upon written request shall promptly furnish to a qualified beneficiary a copy of the portion of the trust instrument which relates to the interest of a qualified beneficiary.
 - c. A trustee within sixty days after accepting a trusteeship shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number.
 - d. A trustee shall notify the qualified beneficiaries of the trust existence, of the identity of the settlor, of the right to request a copy of the trust instrument, and of the right of the trustee's report as provided in subdivision f within sixty days after the date the trustee acquires knowledge:
 - (1) Of the creation of an irrevocable trust; or
 - (2) That a formerly revocable trust has become irrevocable.
 - e. A trustee shall notify the qualified beneficiaries of any change in the method or rate of the trustee's compensation.
 - f. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.
 - g. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with

respect to future reports and other information, may withdraw a waiver previously given.

- h. Subdivisions c and d do not apply to a trustee that accepts a trusteeship before August 1, 2007, to an irrevocable trust created before August 1, 2007, or to a revocable trust that becomes irrevocable before August 1, 2007.

SECTION 8. Chapter 59-16.1 of the North Dakota Century Code is created and enacted as follows:

59-16.1-01. Consistency with power of attorney provisions.

The provisions of this chapter relating to power of attorney are subject to other provisions of law.

59-16.1-02. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Appointed trust" means an irrevocable trust which receives principal from an invaded trust under this chapter, including a trust created by the settlor of the invaded trust, under the terms of the invaded trust or any other trust instrument, or by the trustees, acting in that capacity, of the invaded trust. For purposes of creating another trust, a requirement that a trust instrument be signed by the settlor is deemed satisfied by the signature of the trustee of the appointed trust.
2. "Authorized trustee" means, as to an invaded trust, a trustee with authority to pay trust principal to or for one or more current beneficiaries other than a trustee who is the settlor, or a beneficiary to whom income or principal must be paid currently or in the future, or who is or will become eligible to receive a distribution of income or principal in the discretion of the trustee, other than by the exercise of a power of appointment held in a nonfiduciary capacity.
3. "Current beneficiary" or "beneficiaries" means individual, or as to a class, an individual who is or will become members of that class, to whom the trustees may distribute principal at the time of the exercise of the power, provided that the interest of a beneficiary to whom income, but not principal, may be distributed at the discretion of the trustee of the invaded trust, may be continued in the appointed trust.
4. "Invade" means the power to pay directly to the beneficiary of a trust or make application for the benefit of the beneficiary.
5. "Invaded trust" means an existing irrevocable inter vivos or testamentary trust whose principal is appointed under this chapter.
6. "Person or persons interested in the invaded trust" means all qualified beneficiaries as defined in subsection 16 of section 59-09-06.
7. "Principal" includes the income of the trust at the time of the exercise of the power which is not currently required to be distributed, including accrued and accumulated income.

8. "Unlimited discretion" means the unlimited power to distribute principal. A power to distribute principal which includes words, such as best interests, welfare, comfort, or happiness may not be considered a limitation of the power to distribute principal.

59-16.1-03. Power of appointment.

An exercise of a power of appointment is not void if the exercise is:

1. More extensive than was authorized, but is valid to the extent authorized by the instrument creating its power; or
2. Less extensive than authorized by the instrument creating the power, unless the donor has manifested a contrary intention.

59-16.1-04. Authorized trustee with unlimited discretion.

1. An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of the principal to a trustee of an appointed trust for, and only for the benefit of, one, more than one, or all of the current beneficiaries of the invaded trust, to the exclusion of any one or more of the current beneficiaries. The successor and remainder beneficiaries of the appointed trust may be none, one, more than one, or all of the successor and remainder beneficiaries of the invaded trust.
2. An authorized trustee exercising the power under subsection 1 of section 59-16.1-04 may grant a discretionary power of appointment in the appointed trust to one or more of the current beneficiaries of the invaded trust, provided that the beneficiary granted a power to appoint may receive principal outright under the terms of the invaded trust.
3. If the authorized trustee grants a power of appointment, the class of permissible appointees in favor of whom the beneficiary may exercise the power of appointment granted in the appointed trust may be broader or otherwise different from the current, successor, and remainder beneficiaries of the invaded trust.
4. If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust may include present or future members of the class.

59-16.1-05. Authorized trustee without unlimited discretion.

1. An authorized trustee with the power to invade trust principal but without unlimited discretion may appoint part or all of the principal of the trust to a trustee of an appointed trust, provided that the current beneficiaries of the appointed trust must be the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries must be the same as the successor and remainder beneficiaries of the invaded trust.
2. If the authorized trustee exercises the power under this section, the appointed trust must include the same language authorizing the trustee to distribute the income or invade the principal of the appointed trust as in the invaded trust.
3. If the authorized trustee exercises the power under this section to extend the term of the appointed trust beyond the term of the invaded trust, then for any

period after the invaded trust would have otherwise terminated under the provisions of the invaded trust, then the appointed trust, in addition to the language required to be included in the appointed trust pursuant to subsection 2 of section 59-16.1-05, also may include language providing the trustee with unlimited discretion to invade the principal of the appointed trust during this extended term.

4. If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust shall include present or future members of the class.
5. If the authorized trustee exercises the power under this section and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust shall grant the power of appointment in the appointed trust and the class of permissible appointees must be the same as in the invaded trust.

59-16.1-06. Special power of appointment.

An exercise of the power to invade trust principal under this chapter is considered to be the exercise of a special power of appointment.

59-16.1-07. Term of appointed trust.

The appointed trust to which an authorized trustee appoints the assets of the invaded trust may have a term that is longer than the term set forth in the invaded trust, including, a term measured by the lifetime of a current beneficiary.

59-16.1-08. Unlimited discretion governs.

If an authorized trustee has unlimited discretion to invade the principal of a trust, and the same trustee or another trustee has the power to invade principal under the trust instrument and the power is not subject to unlimited discretion, then the authorized trustee having unlimited discretion may exercise the power of appointment under section 59-16.1-04.

59-16.1-09. Current need to invade principal.

An authorized trustee may exercise the power to appoint in favor of an appointed trust under sections 59-6.1-04 and 59-16.1-05 whether or not there is a current need to invade principal under the terms of the invaded trust.

59-16.1-10. Fiduciary duty.

An authorized trustee exercising the power under this chapter has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances.

59-16.1-11. Subsequently discovered assets.

Unless the authorized trustee provides otherwise:

1. The appointment of all the assets comprising the principal of the invaded trust to an appointed trust must include subsequently discovered assets of the invaded trust and undistributed principal of the invaded trust acquired after the appointment to the appointed trust; and

2. The appointment of part but not all of the assets comprising the principal of the invaded trust to an appointed trust may not include subsequently discovered assets belonging to the invaded trust and principal paid to or acquired by the invaded trust after the appointment to the appointed trust. These assets must remain the assets of the invaded trust.

59-16.1-12. Requirements for exercise of power to appoint - Notice.

1. The exercise of the power to appoint to an appointed trust under sections 59-16.1-04 and 59-16.1-05 must be evidenced by a written instrument that is signed, dated, and acknowledged by the authorized trustee. The exercise of the power is effective sixty days after the date of delivery of notice as specified in subsection 3, unless each individual entitled to notice agrees in writing to an earlier effective date or waives in writing the right to object to the exercise of the power.
2. An authorized trustee may exercise the power authorized by under sections 59-16.1-04 and 59-16.1-05 without the consent of the settlor or the person interested in the invaded trust and without court approval, provided that the authorized trustee may seek court approval for the exercise with notice to all persons interested in the invaded trust.
3. A copy of the instrument exercising the power, a copy of the appointed trust, and a copy of the invaded trust must be delivered to:
 - a. A person having the right, pursuant to the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under sections 59-16.1-04 and 59-16.1-05; and
 - b. A person interested in the invaded trust.
4. Notice of an exercise of the power must be given in the same manner as provided in section 59-09-09.
5. The instrument exercising the power shall state whether the appointment is of all the assets comprising the principal of the invaded trust or only a part of the assets comprising the principal of the invaded trust and, if a part, the approximate percentage of the value of the principal of the invaded trust that is subject to the appointment.
6. An individual entitled to notice may object to the authorized trustee's exercise of the power under this section by serving a written notice of objection upon the authorized trustee prior to the effective date of the exercise of the power. The failure to object does not constitute consent.
7. If the authorized trustee does not receive a written objection to the proposed exercise from an individual entitled to notice within the applicable period, the authorized trustee is not liable to a person who received or was deemed to have received the required notice in that person's personal, representative, or represented capacities for the exercise of the power.
8. If the authorized trustee receives a written objection within the applicable period, either the authorized trustee or an individual entitled to notice may petition the court to have the proposed exercise of a power performed as proposed, performed with modifications, or denied. In a proceeding, an

individual objecting to the proposed exercise has the burden of proof as to whether the authorized trustee's proposed exercise should not be performed.

- a. A person who has not objected is not estopped from opposing the proposed exercise in the proceeding.
 - b. If the authorized trustee decides not to implement the proposed exercise, the trustee shall notify all persons entitled to notice of the decision not to exercise the power and the reason for the decision, and the authorized trustee's decision not to implement the proposed exercise does not give rise to liability to an individual interested in the invaded trust.
 - c. A person entitled to notice may petition the court to have the exercise of a power performed and has the burden of proof as to whether it should be performed.
9. A copy of the instrument exercising the power and a copy of each of the invaded trust and the appointed trust must be filed with records of the appointed trust and the invaded trust.

59-16.1-13. Rights of trustee.

This section does not abridge the right of a trustee to appoint property in further trust that arises under the terms of the governing instrument of a trust or under any other provision of law or under common law, or as directed by a court having jurisdiction over the trust.

59-16.1-14. No duty to exercise a power to invade.

This chapter does not create a duty to exercise a power to invade principal and inference of impropriety may not be made as a result of an authorized trustee not exercising the power conferred under sections 59-16.1-04 and 59-16.1-05.

59-16.1-15. Power clarified.

A power authorized under sections 59-16.1-04 and 59-16.1-05 may be exercised subject to the provisions of section 59-16.1-10, unless expressly prohibited by the terms of the governing instrument or by the provisions of section 59-16.1-10, but a general prohibition of the amendment or revocation of the invaded trust or a provision that constituting a spendthrift clause does not preclude the exercise of a power under sections 59-16.1-04 and 59-16.1-05.

59-16.1-16. Prohibitions.

An authorized trustee may exercise a power authorized by this chapter to appoint a trust that is a supplemental needs trust that conforms to chapter 59-08. However, an authorized trustee may not exercise a power authorized by this chapter to effect the following:

1. To reduce, limit, or modify any beneficiary's current right to:
 - a. A mandatory distribution of income or principal;
 - b. A mandatory annuity or unitrust interest;
 - c. A current right to withdraw a percentage of the value of the trust; or

- d. A current right to withdraw a specified dollar amount;
2. Notwithstanding subsection 2 of section 59-18-08, to decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence;
 3. To alter or eliminate a provision granting another individual the right to remove or replace the authorized trustee exercising the power under sections 59-16.1-04 or 59-16.1-05, unless notice has been provided to the persons under subsection 3 of section 59-16.1-12, or approval is granted by a court having jurisdiction over the trust;
 4. To make a binding and conclusive fixation of the value of an asset for purposes of distribution, allocation, or otherwise;
 5. To extend the term of the appointed trust beyond a permissible period of the rule against perpetuities of the invaded trust, and an exercise of the power that extends the term of the appointed trust beyond the permissible period of the rule against perpetuities of the invaded trust voids the entire exercise of the power; or
 6. To jeopardize:
 - a. The deduction or exclusion originally claimed with respect to a contribution to the invaded trust that qualified for the annual exclusion under section 2503(b) of the Internal Revenue Code; the marital deduction under section 2056(a) or 2523(a) of the Internal Revenue Code; or the charitable deduction under section 170(a), 642(c), 2055(a), or 2522(a) of the Internal Revenue Code.
 - b. The qualification of a transfer as a direct skip under section 2642(c) of the Internal Revenue Code; or
 - c. Any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code.

59-16.1-17. Compensation - Commissions.

For the purposes of this section, unless a court otherwise directs:

1. An authorized trustee may not exercise a power authorized under sections 59-16.1-04 and 59-16.1-05 to change the provisions regarding the determination of the compensation of a trustee. The commissions or other compensation payable to the trustees of the invaded trust may continue to be paid to the trustees of the appointed trust during the term of the appointed trust and must be determined in the same manner as in the invaded trust.
2. A trustee may not receive a paying commission or other compensation for appointing of property from the invaded trust to an appointed trust under sections 59-16.1-04 and 59-16.1-05.

SECTION 9. Chapter 59-16.2 of the North Dakota Century Code is created and enacted as follows:

59-16.2-01. Consistency with power of attorney provisions.

The provisions of this chapter relating to power of attorney are subject to other provisions of law.

59-16.2-02. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Directing party" means an investment trust advisor, distribution trust advisor, or trust protector as provided in this chapter.
2. "Distribution trust advisor" means one or more persons given authority by the governing instrument to direct, consent to, veto, or otherwise exercise all or a portion of the distribution powers and discretion of the trust, including authority to make discretionary distributions of income or principal.
3. "Excluded fiduciary" means a fiduciary that by the governing instrument is directed to act in accordance with the exercise of specified powers by a directing party, in which case the specified powers must be deemed granted not to the fiduciary but to the directing party and the fiduciary must be deemed excluded from exercising the specified powers.
 - a. If a governing instrument provides a fiduciary as to one or more specified matters is to act, omit action, or make decisions only with the consent of a directing party, the fiduciary is an excluded fiduciary with respect to those matters.
 - b. A person may be an excluded fiduciary even if the person participated in:
 - (1) The exercise of a power described in section 59-09-11 relating to nonjudicial settlement agreements;
 - (2) A power described in chapter 59-16.1 relating to decanting;
 - (3) A permitted trustee amendment; or
 - (4) A similar power that invokes the provisions of this chapter with respect to any new or existing trust.
4. "Fiduciary" means any person expressly given one or more fiduciary duties by the governing instrument, including a trustee.
5. "Governing instrument" means the instrument stating the terms of a trust, including a court order, or nonjudicial settlement agreement establishing, construing, or modifying the terms of the trust in accordance with section 59-09-11, chapter 59-16.1, or other applicable law.
6. "Investment trust advisor" means one or more persons given authority by the governing instrument to direct, consent to, or veto the exercise of all or a portion of the investment powers of the trust.

7. "Power" means authority to take or withhold an action or decision, including an expressly specified power, the implied power necessary to exercise a specified power, and authority inherent in a general grant of discretion.
8. "Trust protector" means one or more persons given one or more of the powers specified in section 59-16.2-05, whether or not designated with the title of trust protector by the governing instrument.

59-16.2-03. Designation and powers of investment trust advisor.

1. An investment trust advisor may be designated in the governing instrument of a trust. The powers of an investment trust advisor may be exercised or not exercised in the sole and absolute discretion of the investment trust advisor, and are binding on all other persons, including each beneficiary, each fiduciary, each excluded fiduciary, and any other party having an interest in the trust.
2. The governing instrument may use the title "investment trust advisor" or a similar name or description demonstrating the intent to provide for the office and function of an investment trust advisor.
3. Unless the terms of the governing instrument provide otherwise, the investment trust advisor has the authority to:
 - a. Direct the trustee with respect to the retention, purchase, transfer, assignment, sale, or encumbrance of trust property and the investment and reinvestment of principal and income of the trust;
 - b. Direct the trustee with respect to all management, control, and voting powers related directly or indirectly to trust assets, including voting proxies for securities held in trust;
 - c. Select and determine reasonable compensation of one or more advisors, managers, consultants, or counselors, including the trustee, and to delegate to them any of the powers of the investment trust advisor in accordance with section 59-16-07; and
 - d. Determine the frequency and methodology for valuing an asset for which there is no readily available market value.

59-16.2-04. Designation and powers of distribution trust advisor.

1. A distribution trust advisor may be designated in the governing instrument of a trust. The powers of a distribution trust advisor may be exercised or not exercised in the sole and absolute discretion of the distribution trust advisor, and are binding on all other persons, including each beneficiary, each fiduciary, each excluded fiduciary, and any other person having an interest in the trust.
2. The governing instrument may use the title "distribution trust advisor" or a similar name or description demonstrating the intent to provide for the office and function of a distribution trust advisor.
3. Unless the terms of the governing instrument provide otherwise, the distribution trust advisor may direct the trustee with regard to all decisions

relating directly or indirectly to discretionary distributions to or for one or more beneficiaries.

59-16.2-05. Designation and powers of trust protector.

1. A trust protector may be designated in the governing instrument of a trust.
2. The powers of a trust protector may be exercised or not exercised in the sole and absolute discretion of the trust protector, and are binding on all other persons, including a beneficiary, an investment trust advisor, a distribution trust advisor, a fiduciary, an excluded fiduciary, and any other person having an interest in the trust.
3. The governing instrument may use the title "trust protector" or a similar name or description demonstrating the intent to provide for the office and function of a trust protector.
4. The powers granted to a trust protector by the governing instrument may include authority to do one or more of the following:
 - a. Modify or amend the governing instrument to achieve favorable tax status or respond to changes in the Internal Revenue Code, federal laws, state laws, or the rulings and regulations under those laws;
 - b. Increase, decrease, or modify the interests of a beneficiary or beneficiaries of the trust;
 - c. Modify the terms of a power of appointment granted by the trust provided, the modification or amendment does not grant a beneficial interest to any individual, class of individuals, or other parties not specifically provided for under the trust instrument;
 - d. Remove, or appoint, a trustee, investment trust advisor, distribution trust advisor, another directing party, investment committee member, or distribution committee member, including designation of a plan of succession for future holders of that office;
 - e. Terminate the trust, including determination of how the trustee is to distribute the trust property to be consistent with the purposes of the trust;
 - f. Change the situs of the trust, the governing law of the trust, or both;
 - g. Appoint one or more successor trust protectors, including designation of a plan of succession for future trust protectors;
 - h. Interpret terms of the trust instrument at the request of the trustee:
 - i. Advise the trustee on matters concerning a beneficiary;
 - j. Amend or modify the governing instrument to take advantage of laws governing:
 - (1) Restraints on alienation;
 - (2) Distribution of trust property; or

(3) Improvement of the administration of the trust;

k. Veto or direct trust distributions; or

l. Provide direction regarding notification of qualified beneficiaries.

5. If a charity is a qualified beneficiary of the trust, a trust protector shall give notice to the attorney general at least sixty days before taking any action authorized under subdivisions b through f of subsection 4. The attorney general may waive this notice requirement.

59-16.2-06. Duty and liability of directing party.

1. A directing party is a fiduciary of the trust subject to the same duties and standards applicable to a trustee of a trust as provided by applicable law unless the governing instrument provides otherwise. However, the governing instrument may not relieve or exonerate a directing party from the duty to act or withhold acting as the directing party in good faith reasonably believes is in the best interests of the trust.
2. Each directing party must keep the excluded fiduciary and any other directing party reasonably informed regarding the administration of the trust with respect to any specific duty or function being performed by the directing party to the extent the duty or function would normally be performed by the excluded fiduciary or to the extent providing the information to the excluded fiduciary or other directing party is reasonably necessary for the excluded fiduciary or other directing party to perform its duties. The directing party shall provide the information reasonably requested by the excluded fiduciary or other directing party.
3. Neither the performance nor the failure to perform of a directing party's duty to inform as provided in this section affects the limitation on the liability of the excluded fiduciary as provided in this section.
4. The directing party may be made a party to an action or proceeding if issues relate to a decision or action of the directing party, even if investment advisory agreements or other related agreement provide otherwise.

59-16.2-07. Duty and liability of excluded fiduciary.

1. The excluded fiduciary shall act in accordance with the governing instrument and comply with the directing party's exercise of the powers granted to the directing party by the governing instrument.
2. Unless otherwise provided in the governing instrument, an excluded fiduciary has no duty to monitor, review, inquire, investigate, recommend, evaluate, or warn with respect to a directing party's exercise of or failure to exercise any power granted to the directing party by the governing instrument, including, any power related to the acquisition, disposition, retention, management, or valuation of any asset or investment.
3. Except as otherwise provided in this chapter or the governing instrument, an excluded fiduciary is not liable, either individually or as a fiduciary, for an action, inaction, consent, or failure to consent by a directing party, including:

- a. If a governing instrument provides an excluded fiduciary is to follow the direction of a directing party and the excluded fiduciary acts in accordance with this direction, except in cases of willful misconduct on the part of the excluded fiduciary in complying with the direction of the directing party, the excluded fiduciary is not liable for any loss resulting directly or indirectly from following the direction, including compliance regarding the valuation of assets for which there is no readily available market value.
 - b. If a governing instrument provides an excluded fiduciary is to act or omit to act only with the consent of a directing party, except in cases of willful misconduct on the part of the excluded fiduciary, the excluded fiduciary is not liable for any loss resulting directly or indirectly from an act taken or omitted as a result of the directing party's failure to provide consent after having been requested to do so by the excluded fiduciary.
 - c. If a governing instrument so provides, or if for any reason, an excluded fiduciary is required to assume the role or responsibilities of a directing party, or if the excluded fiduciary appoints a directing party or successor to a directing party, except in cases of willful misconduct on the part of the excluded fiduciary, the excluded fiduciary is not liable for any loss resulting directly or indirectly from its actions in carrying out the roles and responsibilities of the directing party.
4. An excluded fiduciary does not have an obligation to review or evaluate a direction from a distribution trust advisor nor to perform investment or suitability reviews, inquiries, or investigations, nor to make recommendations or evaluations with respect to investments to the extent the directing party, custodial account owner, or authorized designee of a custodial account owner had authority to direct the acquisition, disposition, or retention of the investment. If the excluded fiduciary offers communication to the directing party or an investment person selected by the investment trust advisor, the action may not be deemed to constitute an undertaking by the excluded fiduciary to monitor or otherwise participate in actions within the scope of the advisor's authority or to constitute a duty to do so.
 5. An excluded fiduciary does not have a duty to communicate with, warn, or apprise a beneficiary or third party concerning instances in which the excluded fiduciary would or may have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the directing party.
 6. Absent a contrary provision in the governing instrument, the actions of the excluded fiduciary, including any communications with the directing party or others, or carrying out, recording, or reporting actions taken at the directing party's direction pertaining to matters within the scope of authority of the directing party, must be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the governing instrument. These administrative actions may not be deemed to constitute an undertaking by the excluded fiduciary to monitor, participate, or otherwise take a fiduciary responsibility for actions within the scope of authority of the directing party.
 7. An excluded fiduciary may obtain and act upon an opinion of counsel on a matter relevant to this section.

59-16.2-08. Application.

This chapter applies to:

1. Existing and future trusts that appoint or provide for a directing party including a party granted power or authority effectively comparable in substance to that of a directing party as provided in this chapter; or
2. An existing or future trusts that:
 - a. Are modified in accordance with applicable law or the terms of the governing instrument to appoint or provide for a directing party; or
 - b. Are modified to appoint or provide for a directing party, including a party granted power or authority effectively comparable in substance to that of a directing party, in accordance with a court order, or a nonjudicial settlement agreement whether the order or agreement specifies this chapter governs the responsibilities, actions, and liabilities of persons designated as a directing party or excluded fiduciary.

SECTION 10. Chapter 59-16.3 of the North Dakota Century Code is created and enacted as follows:

59-16.3-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Disinterested person" means a person who is not a related or subordinate party, as defined in section 672(c) of the Internal Revenue Code [26 U.S.C. 1, et seq.], with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.
2. "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions, or in amounts, or proportions determined by the trustee. However, a trust that otherwise is an income trust may not qualify if it is subject to taxation under section 2001 or section 2501 of the Internal Revenue Code, until the expiration of the period for filing the return therefor.
3. "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in section 672(c) of the Internal Revenue Code, with respect to such distributee.
4. "Interested trustee" means:
 - a. Any individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed; and
 - b. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

5. "Total return unitrust" means an income trust that has been converted under and meets the provisions of this chapter.
6. "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion, or on the direction of one or more persons acting in a fiduciary capacity.
7. "Settlor" means an individual who created an inter vivos or a testamentary trust.
8. "Unitrust" means a trust, the terms of which require or permit distribution of a unitrust amount, without regard to whether the trust has been converted to a unitrust in accordance with this chapter, or whether the trust is established by express terms of the governing instrument.
9. "Unitrust amount" means an amount equal to a percentage of a unitrust's assets that may, or are required, to be distributed to one or more beneficiaries annually in accordance with the terms of the unitrust. The unitrust amount may be determined by reference to the net fair market value of the unitrust's assets as of a particular date each year, or as an average determined on a multiple year basis.
10. "Current valuation year" means the accounting period of the trust for which the unitrust amount is being determined.
11. "Prior valuation year" means each of the two accounting periods of the trust immediately preceding the current valuation year.

59-16.3-02. Trustee's authority to convert income trust - Conditions.

A trustee, other than an interested trustee, or if two or more persons are acting as trustee, a majority of the trustees who are not an interested trustee, and without the approval of a court, may convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust if:

1. The trustee adopts a written policy for the trust providing:
 - a. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;
 - b. In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or
 - c. That the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.
2. The trustee sends written notice of its intention to take that action, along with copies of the written policy and this chapter, to:
 - a. The settlor if living;
 - b. All living individuals who are currently receiving, or eligible to receive, distributions of income of the trust;

59-16.3-03. Interested trustee's authority over actions enumerated in chapter 59-16.3.

If there is not a trustee of the trust other than an interested trustee, the interested trustee, or if two or more persons are acting as trustee and are interested trustees, a majority of those interested trustees, without the approval of a court, may take such action as provided in so long as the trustee appoints a disinterested person who, in its sole discretion, but acting in a fiduciary capacity, determines for the trustee:

1. The percentage to be used to calculate the unitrust amount;
2. The method to be used in determining the fair market value of the trust;
3. Which assets, if any, are to be excluded in determining the unitrust amount; and
4. Complies with subsections 1 through 4 of section 59-16.3-02.

59-16.3-04. Trustee may petition court - Appointment of disinterested person.

If a trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust, but does not have the ability to, or elects not to do it under sections 59-16.3-02 and 59-16.3-03, or if the trustee receives a written objection within the applicable period, the trustee may petition the court for such order as the trustee deems appropriate. If there is only one trustee of such trust and the trustee is an interested trustee, or if there are two or more trustees of such trust and a majority of them are interested trustees, the court, or on the petition of the trustee or trustees, or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present the information to the court as is necessary to enable the court to make its determination.

59-16.3-05. Annual valuation of trust required.

The fair market value of the trust must be determined at least annually, using the valuation date, or dates, or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained must be valued using valuation methods that are deemed reasonable and appropriate. If all income received with respect to the assets is distributed to the extent distributable in accordance with the terms of the governing instrument, assets may be excluded from valuation.

59-16.3-06. Calculation of unitrust amount.

The unitrust amount is determined as follows:

1. For the first three accounting periods of the trust, the unitrust amount for a current valuation year of the trust may not be less than three percent, or more than five percent, by the election of the trustee, the disinterested person, or the court, of the net fair market value of the assets held in the trust on the valuation date of the current valuation year;
2. Beginning with the fourth accounting period of the trust, the unitrust amount for a current valuation year of the trust may not be less than three percent, or more than five percent, by the election of the trustee, the disinterested person,

or the court, of the average of the net fair market value of the assets held in the trust on the valuation date of the current valuation year and the net fair market value of the assets held in the trust on the valuation date of each prior valuation year:

3. The percentage that may be elected by the trustee, the disinterested person, or the court in determining the unitrust amount must be a reasonable current return from the trust, taking into account the intentions of the settlor as expressed in the governing instrument. However, the election by the trustee, the disinterested person, or the court in determining the unitrust amount may not be less than three percent, or more than five percent;
4. The unitrust amount for the current valuation year must be proportionately reduced for any distribution, in whole or in part, other than distributions of the unitrust amount, and for any payments of expenses, including debts, disbursements, and taxes, from the trust within a current valuation year which the trustee determines to be material and substantial, and must be proportionately increased for the receipt, other than a receipt that represents a return on investment, of any additional property into the trust within a current valuation year;
5. In the case of a short accounting period, the trustee shall prorate the unitrust amount on a daily basis;
6. If the net fair market value of an asset held in the trust has been incorrectly determined either in a current valuation year or in a prior valuation year, the unitrust amount must be increased in the case of an undervaluation, or be decreased in the case of an overvaluation, by an amount equal to the difference between the unitrust amount determined based on the correct valuation of the asset and the unitrust amount originally determined;
7. In determining the net fair market value of the assets held in trust, the determination may not include the value of residential property or tangible personal property that, as of the first business day of the current valuation year, one or more income beneficiaries of the trust have or had the right to occupy, or have or had the right to possess or control, other than in a capacity as trustee, and instead the right of occupancy or the right of possession or control must be deemed to be the unitrust amount with respect to the residential property or the tangible personal property; or any asset to be distributed outright to a beneficiary during the valuation period under the terms of the trust and the return on investment on that asset, which return on investment must be distributed to the beneficiary.

59-16.3-07. Unitrust amount as net income.

Following the conversion of an income trust to a total return unitrust, the trustee:

1. Shall treat the unitrust amount as net income of the trust for purposes of determining the amount available, from time to time, for distributions from the trust;
2. May allocate to trust income for each taxable year of the trust:
 - a. Net short-term capital gain described in section 1222(5) of the Internal Revenue Code for that year, but only to the extent the amounts so

allocated together with all other amounts allocate to trust income for that year does not exceed the unitrust amount for that year; and

- b. Net long-term capital gain described in section 1222(7) of the Internal Revenue Code for that year, but only to the extent the amount so allocated together with all other amounts, including amounts described in subdivision a, allocated to trust income for that year does not exceed the unitrust amount for that year.

59-16.3-08. Administration of total return unitrust authority - Authority of trustee.

The trustee, in administering a total return unitrust, may determine:

1. The effective date of the conversion;
2. The timing of distributions;
3. Whether distributions are to be made in cash, in kind, or partly in cash and partly in kind;
4. Which assets are to be excluded in determining the unitrust amount;
5. If the trust is reconverted to an income trust, the effective date of the reconversion; and
6. Any other administrative issues as may be necessary or appropriate to carry out the purposes of this chapter.

59-16.3-09. Distributions of principal not affected by conversion.

Conversion to a total return unitrust under this chapter does not affect any other provisions of the governing instrument, if any, regarding distributions of principal.

59-16.3-10. Spouse may compel reconversion to income trust for certain trusts - Written instrument required.

In the case of a trust for which a marital deduction has been taken for federal tax purpose under sections 2056 and 2523 of the Internal Revenue Code, the spouse otherwise entitled to receive the net income of the trust, by written instrument delivered to the trustee, may compel the reconversion during the spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding contrary provisions in this chapter.

59-16.3-11. Applicability of chapter.

This chapter must be construed as pertaining to the administration of a trust and must be available to a trust that is administered in the state under state law unless:

1. The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;
2. One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust which is not subject to an ascertainable standard under sections 2041 and 2514 of the Internal Revenue Code, or which can be exercised to discharge a duty of support the person possesses; or

3. The governing instrument expressly prohibits use of this chapter by specific reference to the chapter. A provision in the governing instrument that "the provisions of this chapter, or any corresponding provision of future law, may not be used in the administration of this trust" are sufficient to preclude use of this chapter.

59-16.3-12. Trustee acting in good faith not liable - Remedy.

A trustee or disinterested person who in good faith takes or fails to take any action under this chapter is not liable to any person affected by that action or inaction, regardless of whether the person received written notice as provided in this chapter and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The person's exclusive remedy is to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

59-16.3-13. No duty to act created.

This chapter does not create a duty to take action under this chapter, and a trustee is not liable for not considering whether to take action or for choosing not to take action.

59-16.3-14. Chapter not applicable to charitable remainder unitrust.

This chapter does not apply to a charitable remainder unitrust as defined by section 664(d) of the Internal Revenue Code.

SECTION 11. REPEAL. Sections 59-14-01, 59-14-04, and 59-16-08 of the North Dakota Century Code are repealed.

SECTION 12. RETROACTIVE APPLICATION. Section 8 of this Act is retroactive in application to all trusts governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state.

Approved March 21, 2017

Filed March 22, 2017

WAREHOUSING AND DEPOSITS

CHAPTER 417

HOUSE BILL NO. 1126

(Agriculture Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact sections 60-02-09, 60-02-17, 60-02-35, 60-02-38, 60-02-40, 60-02.1-08, 60-02.1-26, 60-02.1-28, 60-02.1-32, 60-02.1-35, 60-02.1-37, 60-02.1-38, 60-04-02, 60-04-04, 60-04-07, 60-04-09, 60-04-10, and 60-10-09 of the North Dakota Century Code, relating to public warehouse and grain buyer licensing and insolvencies of public warehouses and grain buyers; to repeal sections 60-02-39 and 60-02.1-25 of the North Dakota Century Code, relating to warehouse closures; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

60-02-09. Bond filed by public warehouseman.

Before any license is issued ~~to~~effective for any public warehouseman under this chapter, the applicant for ~~such~~the license shall file a bond with the commission which ~~shall~~must:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in ~~such~~that warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:

- a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the commission in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
 8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which ~~such~~the bond is in force but, for losses during any annual license renewal period, ~~shall be~~is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as ~~it shall, in its discretion, deem~~the commission deems necessary to accomplish the purposes of this section. The surety on ~~such~~the bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, ~~such~~the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only ~~shall~~may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and ~~such~~the bond ~~shall~~must be construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount for each.

SECTION 2. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.

A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota public service commission. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. ~~Nothing in this~~This receipt ~~requires~~does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the

commission as a part of the warehouse license application process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the commission.

SECTION 3. AMENDMENT. Section 60-02-35 of the North Dakota Century Code is amended and reenacted as follows:

60-02-35. Grain to be kept insured for benefit of owner by warehouseman.

~~NoA public warehouseman license may be issued to a public warehouseman is not effective~~ unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of the warehouseman for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. ~~NoAn~~ insurance policy covering grain in a public warehouse may not be transferred or assigned to any person for any purpose, except for grain that is not on warehouse receipt or deposit. The insurance policy must be continuous and may only be canceled in accordance with section 60-02-35.1.

SECTION 4. AMENDMENT. Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02-38. Refund of license fee by commission.

When requested in writing, the commission shall refund the license fee of a public warehouse, or so much as in its judgment is just and reasonable, when satisfactory proof is furnished that the warehouse has been transferred to some other person, and the new owner has ~~applied for~~obtained a license for the same warehouse for the unexpired period for which the original license was issued. When a warehouse is destroyed by fire or other cause, the license fee may be prorated as the commission may determine.

SECTION 5. AMENDMENT. Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

60-02-40. Transfer of warehouse - Redemption of receipts.

Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the commission first of its intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
 - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
 - b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receiptholders.

3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The commission may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
5. Surrender to the commission its license for cancellation and at such time the proposed lessee or purchaser shall apply in due form for a new license and tender a new bond for approval review by the commission, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commission may issue permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized or ~~permitted~~ by the commission except when made in accordance with the provisions of this section.

SECTION 6. AMENDMENT. Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-08. Bond filed by grain buyer.

Before any license is ~~issued to~~ effective for any grain buyer under this chapter, the applicant for ~~such~~ the license shall file a bond with the commission which must:

1. Be in a sum not less than five thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.
 - b. For compliance with the provisions of law and the rules of the commission relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by ~~such~~ the bond.
6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the commission in the administration of the licensee's insolvency.

7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain buyer.
8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which ~~such~~the bond is in force but, for losses during any annual license renewal period, ~~shall be~~is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission may require an increase in the amount of any bond, from time to time, as it deems necessary to accomplish the purposes of this section. The surety on ~~such~~the bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, ~~such~~cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and ~~such~~the bond must be construed to cover ~~such~~those facilities as a whole and not a specific amount for each.

SECTION 7. AMENDMENT. Section 60-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-26. Transfer of facility - Redemption of receipts.

Whenever a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the commission first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the commission.
3. Surrender to the commission ~~its~~the grain buyer's license for cancellation and at ~~such~~that time the proposed lessee or purchaser shall applyfile in due form for a new license and tender a new bond for approvalreview by the commission, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commission may issuepermit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized ~~or permitted~~ by the commission except when made in accordance with the provisions of this section.

SECTION 8. AMENDMENT. Section 60-02.1-28 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-28. Insolvency of grain buyer.

A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written demand, including electronic communication, to make payment for grain purchased or marketed by the licensee or is unable to make redelivery upon proper written demand, including electronic communication. The licensee may not assess receiving or redelivery fees on grain that is redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

SECTION 9. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to receiptholders and credit-sale contract claimants.

Upon its appointment, the commission may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the commission along with the receipts, contracts, or other evidence of the claims required by the commission. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 10. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-35. Power of commission to prosecute or compromise claims.

The commission may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action when it will be in the best interests of the receiptholders.
4. Settle and compromise any action when it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

SECTION 11. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-37. Report of trustee to court - Approval - Distribution.

1. Upon the receipt and evaluation of claims, the commission shall file with the court a report showing the amount and validity of each claim after recognizing:
 - a. Relevant liens or pledges.

- b. Relevant assignments.
 - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - d. In case of relevant cash claims or checks, the amount of the claim, ~~with interest from the date of default at the weighted average prime rate charged by the Bank of North Dakota.~~
 - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the commission for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the commission in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
 3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the commission.
 4. Any aggrieved person having an objection to the commission's report shall file the objection with the court and serve copies on the commission, the licensee, and the surety at least ~~ten~~twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
 5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the commission from its trust.

SECTION 12. AMENDMENT. Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-38. Filing fees and court costs - Expenses.

The commission may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the commission in the prosecution of the action and the cost of employing outside counsel ~~may~~must be paid from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, ~~may~~must be paid/reimbursed to the commission from the trust fund and credit-sale contract indemnity funds as appropriate.

SECTION 13. AMENDMENT. Section 60-04-02 of the North Dakota Century Code is amended and reenacted as follows:

60-04-02. Insolvency of warehouseman.

A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written demand, including electronic communication, to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

SECTION 14. AMENDMENT. Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

60-04-04. Notice to receiptholders and credit-sale contract claimants.

Upon its appointment by the district court, the commission may take possession of relevant books and records of the warehouseman. The commission shall cause a notice of its appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the commission along with the receipts, contracts, or such any other evidence of the claims as required by the commission. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or such a longer time as prescribed by the commission, the commission is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from participation in the trust fund payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 15. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

60-04-07. Power of commission to prosecute or compromise claims.

The commission shall have ~~power~~may:

1. ~~To prosecute~~Prosecute any action provided in this chapter in any court in this state or in any other state.
2. ~~To appeal~~Appeal from any adverse judgment to the courts of last resort.
3. ~~To settle~~Settle and compromise any action whenever, in its judgment, this will be for it is in the best interests of the receiptholders.
4. Settle and compromise any action when it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of ~~such the~~the compromise or of the full amount of any insurance policy, bond, or conversion claim, to exonerate the person so compromising or paying in full from further liability growing out of the action.

SECTION 16. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

60-04-09. Report of trustee to court - Approval - Distribution.

Upon the receipt and evaluation of claims filed with it, the commission shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges thereon.
2. Assignments thereof.
3. Deductions therefrom by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount thereof, ~~with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.~~
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date of the insolvency, ~~with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency~~ commission first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

The report must also contain the proposed reimbursement to the commission for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as their interests are determined. If the trust fund is insufficient to redeem all receiptholder claims in full, the fund must be shown prorated in the report in the manner the commission deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the commission.

Any aggrieved person having an objection to the commission's report shall file the objection with the court and serve copies on the commission, the warehouseman, and the surety at least tentwenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the commission from its trust.

SECTION 17. AMENDMENT. Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

60-04-10. Filing fees and court costs - Expenses.

~~Upon the application to the district court as provided in this chapter, or in~~ any action in a state court in this state, the commission shall not be required to pay any

filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the commission in the prosecution of such action as in the attorney general's judgment may be necessary and ~~may~~the commission shall deduct the ~~expense~~expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of this chapter, ~~may~~must be ~~deducted~~reimbursed to the commission from the trust fund and credit-sale indemnity funds as appropriate.

SECTION 18. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.

Any expense incurred by the public service commission in administrating the credit-sale contract indemnity fund ~~is reimbursable~~must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 19. REPEAL. Sections 60-02-39 and 60-02.1-25 of the North Dakota Century Code are repealed.

SECTION 20. LEGISLATIVE MANAGEMENT STUDY - CONSISTENCY IN GRAIN SAMPLING AND TESTING. During the 2017-18 interim, the legislative management shall consider studying practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 418

HOUSE BILL NO. 1125

(Agriculture Committee)

(At the request of the Public Service Commission)

AN ACT to repeal chapter 60-03 of the North Dakota Century Code, relating to licensing hay buyers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 60-03 of the North Dakota Century Code is repealed.

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

Approved March 2, 2017

Filed March 3, 2017

WATERS

CHAPTER 419

HOUSE BILL NO. 1374

(Representatives Schmidt, D. Anderson, J. Nelson, Sanford, Streytle, Zubke)
(Senators Bekkedahl, Kreun, G. Lee, Luick, Schaible, Sorvaag)

AN ACT to create and enact sections 61-02-14.3, 61-02-80, 61-02-81, and a new section to chapter 61-03 of the North Dakota Century Code, relating to contracts and financial assistance for water projects and duties of the state engineer; and to amend and reenact sections 61-02-01.3, 61-02-01.4, 61-02-02, 61-02-04, 61-02-07, and 61-02-08, subsection 1 of section 61-02-14, and subsection 4 of section 61-02-62 of the North Dakota Century Code, relating to definitions of types of financial assistance for water projects and the composition and operation of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-01.3 of the North Dakota Century Code is amended and reenacted as follows:

61-02-01.3. Comprehensive water development plan.

Biennially, the commission shall develop and maintain a comprehensive water development plan organized on a river basin perspective, including an inventory of future water projects for budgeting and planning purposes. As part of the commission's planning process, ~~in order to facilitate local project sponsor participation and project prioritization and to assist in project cost-benefit analysis~~education regarding life cycle analyses for municipal water supply projects, and economic analyses for flood control and water conveyance projects expected to cost more than five hundred thousand ~~one~~ million dollars, the commission shall develop a policy that outlines procedures for commissioner-hosted meetings within the upper Red River, lower Red River, James River, Mouse River, upper Missouri River, lower Missouri River, and Devils Lake drainage basins.

SECTION 2. AMENDMENT. Section 61-02-01.4 of the North Dakota Century Code is amended and reenacted as follows:

61-02-01.4. State water commission cost-share policy.

~~The state water commission shall adopt a cost-share policy for the financing of water projects. The policy review, gather stakeholder input on, and rewrite as necessary the commission's "Cost-share Policy, Procedure and General Requirements" and "Project Prioritization Guidance" documents. The commission's cost-share policy:~~

1. Must provide a water supply project is eligible for grants a cost-share up to seventy-five percent of the total eligible project costs.

2. May not determine program eligibility of water supply projects based on a population growth factor. However, a population growth factor may be used in prioritizing projects for that purpose.
3. Must consider all project costs potentially eligible for reimbursement, except the commission shall exclude operations expense and regular maintenance, including removal of vegetative materials and sediment, for water conveyance projects and may exclude operations expense and regular maintenance for other projects. The commission shall require a water project sponsor to maintain a capital improvement fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.
4. May not determine program eligibility of water supply projects based on affordability. However, affordability may be used in prioritizing projects for that purpose.

²⁰⁶ **SECTION 3. AMENDMENT.** Section 61-02-02 of the North Dakota Century Code is amended and reenacted as follows:

61-02-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the state water commission.
2. "Cost of works" includes:
 - a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
 - b. The cost of all water rights acquired or exercised by the commission in connection with such works;
 - c. The cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction;
 - d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;
 - e. Administrative expenses;
 - f. The construction of the works and the placing of the same in operation; and
 - g. Such other expenses as may be necessary or incident to the financing authorized in this chapter, including funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.

²⁰⁶ Section 61-02-02 was also amended by section 17 of House Bill No. 1020, chapter 19.

3. "Cost-share" means funds appropriated by the legislative assembly or otherwise transferred by the commission to a local entity under commission policy as reimbursement for a percentage of the total approved cost of a project approved by the commission.
4. "Economic analysis" means an estimate of economic benefits and direct costs that result from the development of a project.
5. "Grant" means a one-time sum of money appropriated by the legislative assembly and transferred by the commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.
6. "Life cycle analysis" means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.
7. "Loan" means an amount of money lent to a sponsor of a project approved by the commission to assist with funding approved project components. A loan may be stand-alone financial assistance.
8. "Owner" includes all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.
- 4-9. "Project" means any one of the works defined in subsection 5, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
- 5-10. "Water conveyance project" means any surface or subsurface drainage works, bank stabilization, or snagging and clearing of water courses.
11. "Works" includes:
 - a. All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;
 - b. All water rights acquired and exercised by the commission in connection with such works;
 - c. All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
 - d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 4. AMENDMENT. Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

61-02-04. State water commission - Members - Terms - Qualifications.

The state water commission ~~shall consist~~consists of the governor, agriculture commissioner, and seven other members ~~to be~~ appointed by the governor who shall take into account reasonable geographic considerations in making ~~such~~the appointments with the intent of having each of the seven major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin, the lower Missouri River basin, the James River basin, the upper Red River basin, the lower Red River basin, the Mouse River basin, and the Devils Lake basin. The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at such meetings as that official ~~may be~~is unable to attend. The seven appointive members of the commission must be appointed for a term of six years each with ~~their~~the terms of office so arranged that two terms and not more than three terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

SECTION 5. AMENDMENT. Section 61-02-07 of the North Dakota Century Code is amended and reenacted as follows:

61-02-07. Quorum - What constitutes.

A majority of the members of the commission ~~shall constitute~~constitutes a quorum, and the affirmative or negative vote of five members ~~shall be~~is necessary to bind the commission except for adjournment.

²⁰⁷ **SECTION 6. AMENDMENT.** Section 61-02-08 of the North Dakota Century Code is amended and reenacted as follows:

61-02-08. Meetings of commission - Chairman and vice chairman.

The commission ~~may hold meetings at such times and~~shall hold at least one meeting every two months at such ~~places as it, by resolution, may provide.~~ The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. The governor, as chairman, shall preside at all meetings of the commission and in case of the governor's absence or disability, the vice chairman shall preside. The seven appointed members of the commission shall select an appointed member to serve as vice chairman of the commission.

SECTION 7. AMENDMENT. Subsection 1 of section 61-02-14 of the North Dakota Century Code is amended and reenacted as follows:

1. To investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and projects, public and private, which in its judgment may be necessary or advisable:
 - a. To control the low-water flow of streams in the state.

²⁰⁷ Section 61-02-08 was also amended by section 18 of House Bill No. 1020, chapter 19.

- b. To impound water for the improvement of municipal, industrial, and rural water supplies.
- c. To control and regulate floodflow in the streams of the state to minimize the damage of such floodwaters.
- d. To conserve and develop the waters within the natural watershed areas of the state and, subject to vested rights, to divert the waters within a watershed area to another watershed area and the waters of any river, lake, or stream into another river, lake, or stream.
- e. To improve the channels of the streams for more efficient transportation of the available water in the streams.
- f. To provide sufficient water flow for the abatement of stream pollution.
- g. To develop, restore, and stabilize the waters of the state for domestic, agricultural, and municipal needs, irrigation, flood control, recreation, and wildlife conservation by the construction and maintenance of dams, reservoirs, and diversion canals.
- h. To promote the maintenance of existing drainage channels in agricultural lands and to construct any needed channels.
- i. To provide more satisfactory subsurface water supplies for the municipalities of the state.
- j. To finance the construction, establishment, operation, and maintenance of public and private works, dams, and irrigation projects, which in its judgment may be necessary and advisable, except the commission may not provide a cost-share for the costs of operation or maintenance, including removal of vegetative materials and sediment, of a water conveyance project.
- k. To provide for the storage, development, diversion, delivery, and distribution of water for the irrigation of agricultural land and supply water for municipal and industrial purposes.
- l. To provide for the drainage of lands injured by or susceptible of injury from excessive rainfall or from the utilization of irrigation water, and subject to the limitations prescribed by law, to aid and cooperate with the United States and any department, agency, or officer thereof, and with any county, township, drainage district, or irrigation district of this state, or of other states, in the construction or improvement of such drains.
- m. To provide water for stock.
- n. To provide water for the generation of electric power and for mining and manufacturing purposes.

SECTION 8. Section 61-02-14.3 of the North Dakota Century Code is created and enacted as follows:

61-02-14.3. Commission agreements - Terms, conditions, and reapplication.

An agreement for funding which is approved by the commission to fund a water project under this chapter must require a progress report to the commission at least every four years if the term of the project exceeds four years. If a progress report is not timely received or, if after a review of a progress report, the commission determines the project has not made sufficient progress, the commission may terminate the agreement for project funding. The project sponsor may submit a new application to the commission for funding for a project for which the commission previously terminated funding.

SECTION 9. AMENDMENT. Subsection 4 of section 61-02-62 of the North Dakota Century Code is amended and reenacted as follows:

4. Covenant to fix and establish such prices, rates, and charges for water and other services made available in connection with the works or project as to provide at all times funds together with other funds the commission may pledge which will be sufficient:
 - a. To pay all costs of operation and maintenance of the works or project, as permitted under this chapter, together with necessary repairs thereto;
 - b. To meet and pay the principal and interest of all the bonds as they severally become due and payable; and
 - c. To create such reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation, repair, replacement, and maintenance of the works or project as the commission shall determine.

SECTION 10. Section 61-02-80 of the North Dakota Century Code is created and enacted as follows:

Flood control projects - Financial assistance limited.

Except for flood control projects authorized by the legislative assembly or the commission before July 1, 2017, the commission shall calculate the amount of its financial assistance, including loans, grants, cost-share, and issuance of bonds, based on the needs for protection of health, property, and enterprise, against:

1. One hundred year flood events as determined by a federal agency;
2. The national economic development alternative; or
3. The local sponsor's preferred alternative if the commission first determines the historical flood prevention costs and flood damages, and the risk of future flood prevention costs and flood damages, warrant protection to the level of the local sponsor's preferred alternative.

SECTION 11. Section 61-02-81 of the North Dakota Century Code is created and enacted as follows:

Development in breach inundation zones - No financial assistance for dam improvements.

Notwithstanding any other provision of law, if a political subdivision permits building or development within a breach inundation zone and the building or development causes a change in a dam's current hazard classification necessitating structural improvements or upgrades to the dam, the political subdivision shall pay for the necessary improvements or upgrades. State loans, grants, cost-share, and other

financial assistance may not be provided to pay for the dam improvements or upgrades. For purposes of this section, "breach inundation zone" means the area downstream of the dam which would be flooded in the event of a dam failure or uncontrolled release of water.

²⁰⁸ **SECTION 12.** A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Economic analysis process required for certain projects.

The state engineer shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than seven hundred fifty thousand dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the state engineer shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

Approved April 18, 2017

Filed April 18, 2017

²⁰⁸ Section 61-03-21.4 was amended by section 21 of House Bill No. 1020, chapter 19.

CHAPTER 420

HOUSE BILL NO. 1390

(Representatives Headland, Blum, Brandenburg, Kading)
(Senators Meyer, Rust, Wanzek)

AN ACT to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; to provide for a legislative management study; to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Within three months after the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board 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 lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts must shall 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 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.
 - b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management

system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
- b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
- c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.
- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control

- structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
- e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
 - 7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

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

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 421

SENATE BILL NO. 2047

(Legislative Management)
(Water Topics Overview Committee)

AN ACT to amend and reenact subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the authority of water resource boards to exercise the power of quick take eminent domain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Exercise the power of eminent domain ~~in the manner provided by~~ as follows:
 - a. Except as permitted under subdivision b, the board shall comply with title 32 for the purpose of acquiring and securing by eminent domain any rights, titles, interests, estates, or easements 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 dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when
 - b. (1) If the interest sought to be acquired is an easement for a right of way for any project authorized in this chapter for which federal or state funds have been appropriated made available, the district, after making a written offer to purchase the right of way and depositing may acquire the right of way by quick take eminent domain as authorized by section 16 of article I of the Constitution of North Dakota, after the district attempts to purchase the easement for the right of way by:
 - (a) Conducting informal negotiations for not less than sixty days.
 - (b) If informal negotiations fail, the district shall engage in formal negotiations by:
 - [1] Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
 - [2] Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.

- [3] Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.
- (2) Any written communication to the landowner must include contact information for responding to the board and a description of the required negotiation timeline.
- (3) A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. If formal negotiation efforts fail, the district shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner thirty days' notice of the meeting to allow the landowner to attend. After receiving verification from the district that there has been no reference or threat of quick take eminent domain by the district during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain. If the county commissioners approve the use of quick take eminent domain by a majority vote, the district may take immediate possession of the right of way, but not a blanket easement, if the district files an affidavit by the chairman of the water resource board which states the district has fulfilled the required negotiation steps and deposits the amount of the written offer with the clerk of the district court of the county wherein which the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota.
- (4) 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.
- (5) If ownership of a right of way has not terminated, ownership of a right of way acquired under this subdivision terminates automatically when the district no longer needs the right of way for the purpose for which it was acquired.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 422

HOUSE BILL NO. 1055

(Representatives Zubke, Kempenich, B. Anderson, D. Anderson)
(Senator Bekkedahl)

AN ACT to amend and reenact section 61-16.1-16 of the North Dakota Century Code, relating to the aggregate total outstanding revenue bond indebtedness limit for water resource districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-16 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-16. Revenue bonds.

Each district shall have the power and authority to issue revenue bonds, not exceeding an aggregate total outstanding of ~~ten~~fifty million dollars, for the purpose of financing construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the water resource board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds shall not be a general obligation of any county and shall not be secured by property taxes.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 423

HOUSE BILL NO. 1339

(Representatives Skroch, Ertelt, B. Koppelman, McWilliams, Toman, Vigesaa)
(Senators Burckhard, Luick, Osland)

AN ACT to amend and reenact sections 61-16.1-22, 61-16.1-23, and 61-16.1-26 of the North Dakota Century Code, relating to notice, appeals, and refunds of special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-22 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.

After entering an order establishing the project, the water resource board shall cause the assessment list to be published once each week for ~~two~~three successive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The board also shall mail a copy of the notice of the hearing in an envelope clearly marked "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The date set for the hearing may not be less than ~~twenty~~thirty days after the mailing 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 or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that the same is correct as confirmed by the board and shall file the list in the office of the secretary.

SECTION 2. AMENDMENT. Section 61-16.1-23 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-23. Appeal to state engineer.

After the hearing provided for in section 61-16.1-22, affected landowners and any political subdivision subject to assessment, having not less than ~~twenty-five~~twenty percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been

made equitably, the state engineer may proceed to correct the same, and the state engineer's correction and adjustment of said assessment is final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, the state engineer may order a relocation and redesign. Such relocation and redesign must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision who or which claims that the landowner or political subdivision will receive no benefit at all from the construction of a new project may appeal to the state engineer within ten days after the hearing on assessments, the question of whether there is any benefit. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision, but shall only determine if there is any benefit to the landowner or political subdivision, and the determination of the state engineer upon such question is final.

SECTION 3. AMENDMENT. Section 61-16.1-26 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-26. Reassessment of benefits.

The water resource board may hold at any time or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such project to each tract of land affected. ~~At least ten days' notice~~ Notice of the hearing must be given by publication once each week for three consecutive weeks, beginning at least thirty days before the hearing, in the newspaper or newspapers having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice thereof ~~by ordinary mail of the hearing in an envelope clearly marked "ASSESSMENT NOTICE"~~ to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer in the assessed district at the landowner's address as shown by the tax rolls of the counties in which the affected property is located. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make such reassessment more than once every ten years, nor may any assessment or balance thereof supporting a project fund be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 424

SENATE BILL NO. 2270

(Senators Wanzek, G. Lee, Sorvaag)
(Representatives Sanford, Vigesaa, Zubke)

AN ACT to amend and reenact subsection 5 of section 6-09.4-03, section 61-24-27, subsection 3 of section 61-24.8-01, and sections 61-24.8-13, 61-24.8-14, 61-24.8-16, and 61-24.8-17 of the North Dakota Century Code, relating to financing options for the Garrison Diversion Conservancy District and notice of assessments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁹ **SECTION 1. AMENDMENT.** Subsection 5 of section 06-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Political subdivision" means:
 - a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
 - b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
 - (1) Operating any public water system that is subject to chapter 61-28.1.
 - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
 - c. The Bank of North Dakota for purposes of the revolving loan fund program established by chapter 61-28.2.
 - d. The state water commission for purposes of the revolving loan fund program established by chapter 61-28.1.
 - e. A qualified borrower within the meaning of 26 U.S.C. 54(j)(5) [Pub. L. 109-58; 119 Stat. 995].
 - f. The Garrison Diversion Conservancy District or any successor entity or improvement district created under chapter 61-24.8 to finance or refinance irrigation and water supply projects.
 - g. The Lake Agassiz water authority, for use in financing the construction, acquisition, extension, expansion, alteration, betterment, maintenance, or renovation of a project under section 61-39-16.

²⁰⁹ Section 6-09.4-03 was also amended by section 3 of Senate Bill No. 2327, chapter 199.

²¹⁰ **SECTION 2. AMENDMENT.** Section 61-24-27 of the North Dakota Century Code is amended and reenacted as follows:

61-24-27. Notes and bonds exempt from taxation.

Notwithstanding any other provision of law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state including the public finance authority, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, credit unions, investment companies, insurance companies, and other entities carrying on an investment business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued under this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their interest and income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

SECTION 3. AMENDMENT. Subsection 3 of section 61-24.8-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Bond" means any revenue bond, refunding bond, improvement bond, or other evidence of indebtedness, including indebtedness owed to banks, or other public or private lending sources, of the district issued under this chapter.

SECTION 4. AMENDMENT. Section 61-24.8-13 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-13. Hearing - Notice - Contents.

1. 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, except when the conditions under subsection 2 are met. 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

²¹⁰ Section 61-24-27 was also amended by section 1 of Senate Bill No. 2269, chapter 427.

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.

2. A public hearing is not required if the board:
 - a. Provides written notice to each affected landowner setting forth the probable total cost of the project, the landowner's share of the project cost, the portion of the landowner's property, if any, to be condemned for the project, and when and where votes concerning the proposed project may be filed. If the written notice is given to each affected landowner, the assessment list for the proposed project need not be filed with the county auditor of each county in which the project is located; and
 - b. Publishes notice of the project 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 at least twenty-one days before the deadline for filing votes on the project.

SECTION 5. AMENDMENT. Section 61-24.8-14 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-14. Voting on proposed projects.

At the hearing or in the written notice, 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 or thirty days after the date of mailing the notice 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. No publication is required if the board provides written notice of the order establishing or denying establishment of a project to each affected landowner. Any right of appeal begins to run on the date of publication or mailing of the notice.

SECTION 6. AMENDMENT. Section 61-24.8-16 of the North Dakota Century Code is amended and reenacted as follows:

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 or the mailing of written notice 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.

SECTION 7. AMENDMENT. Section 61-24.8-17 of the North Dakota Century Code is amended and reenacted as follows:

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. Publication of the assessment list is not required if the board mails the assessment list and the time and place of the hearing to each affected landowner. The date set for the hearing must be not less than fourteen days after the mailing or 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 hearing is not required if the board receives written consent from each affected landowner to the levy of assessments. 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.

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

Approved April 19, 2017

Filed April 19, 2017

CHAPTER 425

HOUSE BILL NO. 1160

(Representatives Brandenburg, Grueneich, Jones, Magrum, Satrom)
(Senators Bekkedahl, Erbele)

AN ACT to amend and reenact subdivision d of subsection 2 of section 61-28-04.1 of the North Dakota Century Code, relating to exempting plumbers from permit fee requirements for persons who service septic systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 2 of section 61-28-04.1 of the North Dakota Century Code is amended and reenacted as follows:

- d. To establish reasonable fees for permitting septic system servicers, however the department may not establish or charge a permit or renewal fee for a plumber licensed under chapter 43-18 who operates no more than one servicing unit;

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 426

SENATE BILL NO. 2134

(Senators Armstrong, Bekkedahl, Unruh)
(Representatives Bosch, Longmuir, Porter)

AN ACT to create and enact chapter 61-33.1 of the North Dakota Century Code, relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin project dams; to provide appropriations; to provide a contingent line of credit; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 61-33.1 of the North Dakota Century Code is created and enacted as follows:

61-33.1-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Corps survey" means the last known survey conducted by the army corps of engineers in connection with the corps' determination of the amount of land acquired by the corps for the impoundment of Lake Sakakawea and Lake Oahe, as supplemented by the supplemental plats created by the branch of cadastral survey of the United States bureau of land management.
2. "Historical Missouri riverbed channel" means the Missouri riverbed channel as it existed upon the closure of the Pick-Sloan Missouri basin project dams, and extends from the Garrison Dam to the southern border of sections 33 and 34, township 153 north, range 102 west which is the approximate location of river mile marker 1,565, and from the South Dakota border to river mile marker 1,303.
3. "Segment" means the individual segment maps contained within the corps survey final project maps for the Pick-Sloan project dams.
4. "State phase two survey" means the "Ordinary High Water Mark Survey Task Order #2 Final Technical Report" commissioned by the board of university and school lands.

61-33.1-02. Mineral ownership of land inundated by Pick-Sloan Missouri basin project dams.

The state sovereign land mineral ownership of the riverbed segments inundated by Pick-Sloan Missouri basin project dams extends only to the historical Missouri riverbed channel up to the ordinary high water mark. The state holds no claim or title to any minerals above the ordinary high water mark of the historical Missouri riverbed channel inundated by Pick-Sloan Missouri basin project dams, except for original grant lands acquired by the state under federal law and any minerals acquired by the state through purchase, foreclosure, or other written conveyance. Mineral ownership of the riverbed segments inundated by Pick-Sloan Missouri basin project dams which are located within the exterior boundaries of the Fort Berthold reservation and

Standing Rock Indian reservation is controlled by other law and is excepted from this section.

61-33.1-03. Determination of the ordinary high water mark of the historical Missouri riverbed channel.

1. The corps survey must be considered the presumptive determination of the ordinary high water mark of the historical Missouri riverbed channel, subject only to the review process under this section and judicial review as provided in this chapter.
2. Upon the effective date of this Act, the department of mineral resources shall commence procurement to select a qualified engineering and surveying firm to conduct a review of the corps survey under this section. The review must be limited to the corps survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of sections 33 and 34, township 153 north, range 102 west. Within ninety days of the first date of publication of the invitation, the department shall select and approve a firm for the review. The department may not select or approve a firm that has a conflict of interest in the outcome of the review, including any firm that has participated in a survey of the Missouri riverbed for the state or a state agency, or participated as a party or expert witness in any litigation regarding an assertion by the state of mineral ownership of the Missouri riverbed.
3. The selected and approved firm shall review the delineation of the ordinary high water mark of the corps survey segments. The review must determine whether clear and convincing evidence establishes that a portion of the corps survey does not reasonably reflect the ordinary high water mark of the historical Missouri riverbed channel under state law. The following parameters, historical data, materials, and applicable state laws must be considered in the review:
 - a. Aerial photography of the historical Missouri riverbed channel existing before the closure date of the Pick-Sloan project dams;
 - b. The historical records of the army corps of engineers pertaining to the corps survey;
 - c. Army corps of engineers and United States geological survey elevation and Missouri River flow data;
 - d. State case law regarding the identification of the point at which the presence of action of the water is so continuous as to destroy the value of the land for agricultural purposes, including hay lands. Land where the high and continuous presence of water has destroyed its value for agricultural purposes, including hay land, generally must be considered within the ordinary high water mark. The value for agricultural purposes is destroyed at the level where significant, major, and substantial terrestrial vegetation ends or ceases to grow. Lands having agricultural value capable of growing crops or hay, but not merely intermittent grazing or location of cattle, generally must be considered above the ordinary high water mark; and
 - e. Subsection 3 of section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within

the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

4. The firm shall complete the review within six months of entering a contract with the department of mineral resources. The department may extend the time required to complete the review if the department deems an extension necessary.
5. Upon completion of the review, the firm shall provide its findings to the department. The findings must address each segment of the corps survey the firm reviewed and must include a recommendation to either maintain or adjust, modify, or correct the corps survey as the delineation of the ordinary high water mark for each segment. The firm may recommend an adjustment, modification, or correction to a segment of the corps survey only if clear and convincing evidence establishes the corps survey for that segment does not reasonably reflect the ordinary high water mark of the historical Missouri riverbed channel under state law.
6. The department shall publish notice of the review findings and a public hearing to be held on the findings. The public must have sixty days after publication of the notice to submit comments to the department. At the end of the sixty days, the department shall hold the public hearing on the review.
7. After the public hearing, the department, in consultation with the firm, shall consider all public comments, develop a final recommendation on each of the review findings, and deliver the final recommendations to the industrial commission, which may adopt or modify the recommendations. The industrial commission may modify a recommendation from the department only if it finds clear and convincing evidence from the resources in subsection 3 that the recommendation is substantially inaccurate. The industrial commission's action on each finding will determine the delineation of the ordinary high water mark for the segment of the river addressed by the finding.

61-33.1-04. Implementation.

1. Within six months after the adoption of the final review findings by the industrial commission:
 - a. Any royalty proceeds held by operators attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey must be released to the owners of the tracts, absent a showing of other defects affecting mineral title; and
 - b. Any royalty proceeds held by the board of university and school lands attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey must be released to the relevant operators to distribute to the owners of the tracts, absent a showing of other defects affecting mineral title.
2. Upon adoption of the final review findings by the industrial commission:

- a. The board of university and school lands shall begin to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases. The board shall complete the adjustments, refunds, and payment demands within two years after the date of adoption of the final review findings.
- b. Operators of oil and gas wells affected by the final review findings immediately shall begin to implement any acreage and revenue adjustments relating to state-owned and privately owned oil and gas interests. The operators shall complete the adjustments within two years after the date of adoption of the review findings. Any applicable penalties, liability, or interest for late payment of royalties or revenues from an affected oil or gas well may not begin to accrue until the end of the two-year deadline. The filing of an action under section 61-33.1-05 tolls the deadline for any oil and gas well directly affected by the action challenging the review finding.

61-33.1-05. Actions challenging review findings.

An interested party seeking to bring an action challenging the review findings or recommendations or the industrial commission actions under this chapter shall commence an action in district court within two years of the date of adoption of the final review findings by the industrial commission. The plaintiff bringing an action under this section may challenge only the final review finding for the section or sections of land in which the plaintiff asserts an interest. The state and all owners of record of fee or leasehold estates or interests affected by the finding, recommendation, or industrial commission action challenged in the action under this section must be joined as parties to the action. A plaintiff or defendant claiming a boundary of the ordinary high water mark of the historical Missouri riverbed channel which varies from the boundary determined under this chapter bears the burden of establishing the variance by clear and convincing evidence based on evidence of the type required to be considered by the engineering and surveying firm under subsection 3 of section 61-33.1-03. Notwithstanding any other provision of law, an action brought in district court under this section is the sole remedy for challenging the final review, recommendations, and determination of the ordinary high water mark under this chapter, and preempts any right to rehearing, reconsideration, administrative appeal, or other form of civil action provided under law.

61-33.1-06. Public domain lands.

Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting nonpatented public domain lands owned by the United States must be determined by the branch of cadastral study of the United States bureau of land management in accordance with federal law.

61-33.1-07. State engineer regulatory jurisdiction.

This chapter does not affect the authority of the state engineer to regulate the historical Missouri riverbed channel, minerals other than oil and gas, or the waters of the state, provided the regulation does not affect ownership of oil and gas minerals in and under the riverbed or lands above the ordinary high water mark of the historical Missouri riverbed channel inundated by Pick-Sloan Missouri basin project dams.

SECTION 2. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$800,000, or so much of the sum as may be necessary, to the department of mineral resources for the purpose of contracting with a qualified engineering and surveying firm to conduct a limited review of the corps survey under this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 3. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT LINE OF CREDIT - MINERAL REVENUE REPAYMENTS.

1. There is appropriated out of any moneys held in reserve in the strategic investment and improvements fund for mineral title disputes, not otherwise appropriated, the sum of \$100,000,000, or so much of the sum as may be necessary, to the commissioner of university and school lands for the purpose of mineral revenue repayments, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item.
2. The funding provided in this section is available for the following:
 - a. Repayment of any lease, bonus, rents, and royalty collections attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey, as required in subsection 1 of section 61-33.1-04.
 - b. Repayment of any lease, bonus, rents, and royalty collections attributable to the remaining oil and gas mineral tracts, as required in subsection 2 of section 61-33.1-04.
 - c. Other mineral revenue repayments or other reimbursements that are attributable to oil and gas mineral tracts requiring repayments under this Act.
3. Upon adoption of the final review findings by the industrial commission, the commissioner of university and school lands shall calculate the amount necessary for mineral revenue repayments based on the final review findings.
4. As soon as a repayment amount for a known recipient is calculated but after the expenditure of the \$100,000,000 in subsection 1:
 - a. The commissioner of university and school lands shall request from the sixty-sixth legislative assembly additional funding sufficient for any remaining mineral revenue or other repayments.
 - b. If the \$100,000,000 is expended before the repayment of all amounts calculated for known recipients and before additional funds are made available by the sixty-sixth legislative assembly, the Bank of North Dakota shall extend a line of credit, not to exceed \$87,000,000, to the commissioner of university and school lands. The commissioner of university and school lands shall access the line of credit, to the extent necessary, the sum of which is appropriated, for the purpose of mineral revenue and other repayments under this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The commissioner of university

and school lands shall repay the line of credit from funds available in the strategic investment and improvements fund as appropriated by the legislative assembly.

SECTION 4. RETROACTIVE APPLICATION. Section 1 of this Act is retroactive to the date of closure of the Pick-Sloan Missouri basin project dams. The ordinary high water mark determination under this Act is retroactive and applies to all oil and gas wells spud after January 1, 2006, for purposes of oil and gas mineral and royalty ownership.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 2017

Filed April 21, 2017

CHAPTER 427

SENATE BILL NO. 2269

(Senators Wanzek, G. Lee, Sorvaag)
(Representatives Sanford, Vigesaa, Zubke)

AN ACT to create and enact section 61-39-04.1 of the North Dakota Century Code, relating to authorization of a state Red River valley water supply project; and to amend and reenact sections 61-24-27, 61-24.7-05, 61-39-01, 61-39-02, 61-39-03, 61-39-04, 61-39-05, 61-39-11, and 61-39-16 of the North Dakota Century Code, relating to the powers of the Lake Agassiz water authority and funding for the Red River valley water supply project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹¹ **SECTION 1. AMENDMENT.** Section 61-24-27 of the North Dakota Century Code is amended and reenacted as follows:

61-24-27. Notes and bonds exempt from taxation.

Notwithstanding any other provision of law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, including the public finance authority, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, credit unions, investment companies, insurance companies, and other entities carrying on an investment business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued under this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their interest and income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

SECTION 2. AMENDMENT. Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

61-24.7-05. State funding plan.

1. The legislative assembly declares its intent to provide state funding for a share of the ~~nonfederal or local~~ cost of constructing the Red River valley water supply project.
2. Any funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
3. State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from any federal funding that

²¹¹ Section 61-24-27 was also amended by section 2 of Senate Bill No. 2270, chapter 424.

becomes available and the local funding for the Red River valley water supply project.

SECTION 3. AMENDMENT. Section 61-39-01 of the North Dakota Century Code is amended and reenacted as follows:

61-39-01. Findings and declaration of policy.

The legislative assembly declares that many areas and localities in eastern and central North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern and central North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to store and distribute water to eastern and central North Dakota be established to provide for the supply and distribution of water to the people of eastern and central North Dakota for purposes, including domestic, rural water, municipal, livestock, ~~light~~ industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern and central North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red River valley water supply project and may enter water supply contracts with member cities and water districts for the sale of water for consumption within or outside the district or the state, including with Canada. Alternatively, the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

The legislative assembly acknowledges that North Dakota and Minnesota communities jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota also to study and possibly provide for the water needs of those Minnesota communities through a Red River valley water supply project, particularly if that project maintains the use of the Red River for North Dakota communities.

In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern and central North Dakota or utilize other financing as addressed in this chapter. This chapter does not abrogate or limit the rights, powers, duties, and functions of the state water commission or state engineer, but is supplementary to those rights, powers, duties, and functions.

SECTION 4. AMENDMENT. Section 61-39-02 of the North Dakota Century Code is amended and reenacted as follows:

61-39-02. Lake Agassiz water authority created.

The Lake Agassiz water authority consists of cities and water districts, and other water distribution systems located in that part of the state which is included within the boundaries of Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Trail,

Barnes, Cass, Ransom, Sargent, and Richland, and Stutsman Counties and that pay dues to the authority. Minnesota cities may join the authority, provided a portion of the city is located within five miles [8.05 kilometers] of this state, or if the city uses the Red River for its primary water supply. Any other county, city, water district, or Canadian governmental entity or water supply system may join the authority upon application of its board and approval of the application by a majority of the authority's board. The authority shall require any new member to pay for a pro rata share of the project costs previously incurred by the authority members. The authority also may require an entity contracting for a water supply to pay an additional fee if the entity joins the project late. The authority is a governmental agency, body politic and corporate with the authority to exercise the power specified in this chapter, or which may be reasonably implied. Cities and water districts, and other water distribution systems may pay dues to the authority as determined by the authority.

SECTION 5. AMENDMENT. Section 61-39-03 of the North Dakota Century Code is amended and reenacted as follows:

61-39-03. Lake Agassiz water authority - Board of directors.

1. The authority must be governed by a board of directors selected as follows:
 1. a. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
 2. b. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
 3. c. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.
 4. d. One member from a city with a population of less than five thousand located east of state highway 1.
 5. e. Two members from water districts located east of state highway 1 and north of state highway 200.
 6. f. Two members from water districts located east of state highway 1 and south of state highway 200.
 7. g. One member from water districts located east of state highway 1.
 8. h. One member from a Minnesota city with a population of more than thirty thousand and which is located within five miles [8.05 kilometers] of this state.
 - i. One member from water districts located west of state highway 1.
 - j. One member from a city west of state highway 1.
2. North Dakota city members must be selected for two-year terms by election by cities ~~located east of state highway 4~~ during the annual meeting of the North Dakota league of cities in every odd-numbered year beginning in 2003. Cities that have paid dues in the calendar year the vote is taken, or signed a development agreement or other participation agreement with the authority before the date of the election, are eligible to vote. Water district members must be selected for two-year terms by election by water districts ~~located east~~

~~of state highway 1 during the annual meeting of the North Dakota rural water systems association in every even-numbered year beginning in 2004. The initial selection of members must be at a meeting held by the board of directors of the North Dakota league of cities and by the board of directors of the North Dakota rural water systems association. The initial city members shall serve until the annual meeting of the North Dakota league of cities in 2003 and the initial water district members shall serve until the annual meeting of the North Dakota rural water systems association in 2004. Water districts that have paid dues in the calendar year the vote is taken, or have signed a development agreement or other participation agreement with the authority before the date of the election, are eligible to vote. For elections of board members after July 1, 2017, a candidate for board member must have a development agreement, water supply contract, or project participation agreement with the authority or the Garrison Diversion Conservancy District. The initial Minnesota city is Moorhead, as it is an associate member of the authority. Moorhead will serve in this capacity until the league of Minnesota cities annual conference in 2006. During even-numbered years thereafter, Minnesota cities within five miles [8.05 kilometers] of the Red River or that use the Red River as a primary water supply may elect their representative. A member may designate an alternate to attend meetings and to act on the member's behalf. The board of directors may designate associate members who are nonvoting members of the board. ~~Notwithstanding the provisions of this section, within two years of the first delivery of water by the Red River valley water supply project, board members must be from a city or water district that has entered a water service contract with the Lake Agassiz water authority or the Garrison Diversion Conservancy District.~~~~

SECTION 6. AMENDMENT. Section 61-39-04 of the North Dakota Century Code is amended and reenacted as follows:

61-39-04. Board of directors - Officers - Meetings.

The board of directors may adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board and a dues structure for membership in the authority. The bylaws may include weighted voting for board members based on nomination capacity; the existence of a development agreement, water supply agreement, or project participation agreement; or other factors the board deems relevant. The board shall elect from its members a chairman and a vice chairman. The board shall also elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least ~~six~~three days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing. The Garrison Diversion Conservancy District shall provide administrative, technical, and legal support for the authority.

SECTION 7. Section 61-39-04.1 of the North Dakota Century Code is created and enacted as follows:

61-39-04.1. State project authorized.

The authority and the Garrison Diversion Conservancy District shall continue studying, planning, developing, and constructing a nonfederal project to meet the

water supply needs of eastern and central North Dakota separate and apart from the federal Red River valley water supply project. The state project may include similar features as the federal project and may rely on and utilize studies, designs, and information developed as part of other water supply projects.

SECTION 8. AMENDMENT. Section 61-39-05 of the North Dakota Century Code is amended and reenacted as follows:

61-39-05. Authority of the Lake Agassiz water authority.

The board of directors of the Lake Agassiz water authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority, or any part thereof.
3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority.
4. Cooperate and contract with the agencies or political subdivisions of the state of North Dakota 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 such employees as the board deems necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
6. Operate and manage the authority to distribute water to its members and others within or outside the territorial boundaries of this state.
7. Sell or exchange any and all real property purchased or acquired by the authority. All money received from any such sale or exchange must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter a contract or contracts to provide for a supply of bulk water from the Garrison Diversion Conservancy District which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, designing, constructing, or reconstructing one or more features of a Red River valley water supply projectsproject, which ~~Red River valley water supply projectsproject~~ the Garrison Diversion Conservancy District may acquire, design, construct, improve, and own, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply

projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, and which contract or contracts the Garrison Diversion Conservancy District may execute without limitation on the term of years.

9. Enter a contract or contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority, which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, designing, constructing, or reconstructing one or more features of a Red River valley water supply projectsproject, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more features of a Red River valley water supply projectsproject, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, which contract or contracts cities and water districts that are members of the Lake Agassiz water authority are authorized to execute without limitation on the term of years.
10. Borrow money from any legal source, including persons listed under section 61-39-11, the public finance agency through the state revolving fund or capital financing, the drinking water state revolving fund, the resources trust fund, and other state funding programs as provided in this chapter.
11. Issue and sell revenue bonds for its own benefit or for the benefit of the Garrison Diversion Conservancy District, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
12. Lend some or all proceeds of its revenue bonds to the Garrison Diversion Conservancy District, to the state of North Dakota, or to a political subdivision or public body within the state, to facilitate the Garrison Diversion Conservancy District's acquisition, design, construction, reconstruction, or improvement of one or more features of a Red River valley water supply projectsproject, or any feasibility study or preliminary economic, engineering, or legal work relating to any Red River valley water supply project.
13. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
14. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.

16. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
17. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
18. Accept from any authorized private entity or state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter ~~into~~ agreements with the entity or agency respecting the loans or grants.
19. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
20. Operate and manage the authority to distribute water to western Minnesota cities that are members of the authority and to any Canadian governmental entity or water system.
21. Require various capital construction contribution rates, and charge different water rates for bulk water purchases based on a tiered system that recognizes higher contributions and water rates for entities that need the project in a drought. Other tiers with less immediate water needs or industrial needs may be assessed costs and charges water rates in relation to the cost of incrementally increasing the size of the project to accommodate those needs or on other bases the authority determines. The authority may charge higher construction costs or water rates to out-of-state entities based on the level of state funding supporting the project. Costs and charges also may vary according to the infrastructure assigned to each entity.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

SECTION 9. AMENDMENT. Section 61-39-11 of the North Dakota Century Code is amended and reenacted as follows:

61-39-11. Notes and bonds exempt from taxation.

Notwithstanding any restriction contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, including the public finance authority; all national banking associations; state banks; trust companies; savings banks and institutions; savings and loan associations; investment companies; and other persons carrying on a banking business; and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their

control in any bonds issued by the authority pursuant to this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

SECTION 10. AMENDMENT. Section 61-39-16 of the North Dakota Century Code is amended and reenacted as follows:

61-39-16. Project - Definition.

As used in this chapter, unless the context otherwise requires, the term "project" means either a system, plant, works, instrumentality, or property used to provide water supply in connection with the state or federal Red River valley water supply project, or a contract for the purchase of water, including a contract for the bulk purchase of water from the Garrison Diversion Conservancy District delivered by means of a state or federal Red River valley water supply project.

Approved March 29, 2017

Filed March 30, 2017

WEAPONS

CHAPTER 428

HOUSE BILL NO. 1395

(Representatives Karls, Porter, Streytle)
(Senators Armstrong, O. Larsen)

AN ACT to amend and reenact subsections 1 and 7 of section 62.1-01-01, subsection 1 of section 62.1-02-04, subdivision m of subsection 2 of section 62.1-02-05, and section 62.1-04-04 of the North Dakota Century Code, relating to dangerous weapons and retired law enforcement officers; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹² **SECTION 1. AMENDMENT.** Subsections 1 and 7 of section 62.1-01-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident, then the term includes the device for an individual who is prohibited from possessing a firearm under this title. ~~However, the term includes a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident.~~
7. "Law enforcement officer" means a:
 - a. A public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law;

²¹² Section 62.1-01-01 was also amended by section 31 of Senate Bill No. 2042, chapter 97.

b. A retired public servant in good standing who:

- (1) Was authorized by law or by a government agency or branch for at least ten years to enforce the law and to conduct or engage in investigations or prosecutions for violations of law;
- (2) Maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers, maintains the standards for qualifications in firearms training for active law enforcement officers as determined by the former agency of the individual in the state in which the individual resides, or maintains the standards used by a certified firearms instructor qualified to conduct a firearms qualification test for active duty officers in the state in which the individual resides;
- (3) Has a photo identification card issued by a local law enforcement agency which identifies the individual as having been employed by a government agency or branch as a law enforcement officer and indicates the individual has passed the firearms proficiency test within twelve months from the date of issue; and
- (4) Has not been found by a qualified medical professional to be unqualified for reasons relating to mental health or entered an agreement with a government agency or branch in which the public servant acknowledges a lack of qualifications for reasons relating to the mental health of the public servant; or

c. A retired public servant in good standing who:

- (1) Was separated from service due to a service-related disability;
- (2) Maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers, maintains the standards for qualifications in firearms training for active law enforcement officers as determined by the former agency of the individual in the state in which the individual resides, or maintains the standards used by a certified firearms instructor qualified to conduct a firearms qualification test for active duty officers in the state in which the individual resides;
- (3) Has a photo identification card issued by a local law enforcement agency which identifies the individual as having been employed by a government agency or branch as a law enforcement officer and indicates the individual has passed the firearms proficiency test within twelve months from the date of issue; and
- (4) Has not been found by a qualified medical professional to be unqualified for reasons relating to mental health or entered an agreement with a government agency or branch in which the public servant acknowledges a lack of qualifications for reasons relating to the mental health of the public servant.

SECTION 2. AMENDMENT. Subsection 1 of section 62.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual who enters or remains in that part of the establishment that is set aside for the retail sale of alcoholic beverages and the consumption of purchased alcoholic beverages or used as a gaming site at which bingo is the primary gaming activity while that individual knowingly possesses a firearm or dangerous weapon is guilty of a class A misdemeanor. In addition, an individual is guilty of an offense under this section for the knowing possession of a device that uses a projectile and voltage or a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident in the part of an establishment that is set aside for the retail sale and consumption of alcoholic beverages.

²¹³ **SECTION 3. AMENDMENT.** Subdivision m of subsection 2 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

- m. A municipal court judge, a district court judge, and a staff member of the office of attorney general, ~~and a retired North Dakota law enforcement officer,~~ if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

²¹⁴ **SECTION 4. AMENDMENT.** Section 62.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

62.1-04-04. Producing license on demand.

Every person while carrying a concealed firearm or dangerous weapon, for which a license to carry concealed is required, shall have on one's person the license issued by this or another state and shall give it to any active law enforcement officer for an inspection upon demand by the officer. The failure of any person to give the license to the officer is prima facie evidence that the person is illegally carrying a firearm or dangerous weapon concealed.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2017

Filed April 12, 2017

²¹³ Section 62.1-02-05 was also amended by section 1 of House Bill No. 1279, chapter 430, section 1 of House Bill No. 1233, chapter 433, section 1 of House Bill No. 1273, chapter 429, section 4 of Senate Bill No. 2097, chapter 258, and section 1 of Senate Bill No. 2125, chapter 431.

²¹⁴ Section 62.1-04-04 was also amended by section 3 of House Bill No. 1169, chapter 432.

CHAPTER 429

HOUSE BILL NO. 1273

(Representatives B. Koppelman, Rick C. Becker, Karls, K. Koppelman, D. Ruby)
(Senator O. Larsen)

AN ACT to amend and reenact section 62.1-02-05 of the North Dakota Century Code, relating to possession of a firearm or dangerous weapon at a public gathering.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁵ **SECTION 1. AMENDMENT.** Section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-05. Possession of a firearm or dangerous weapon at a public gathering - Penalty - Application.

1. An individual who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church, and a publicly owned or operated building.
2. This section does not apply to:
 - a. A law enforcement officer;
 - b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
 - c. A competitor participating in an organized sport shooting event;
 - d. A gun or antique show;
 - e. A participant using a blank cartridge firearm at a sporting or theatrical event;
 - f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
 - g. A student and an instructor at a hunter safety class;
 - h. Private security personnel while on duty;
 - i. A state or federal park;

²¹⁵ Section 62.1-02-05 was also amended by section 1 of House Bill No. 1279, chapter 430, section 1 of House Bill No. 1233, chapter 433, section 3 of House Bill No. 1395, chapter 428, section 4 of Senate Bill No. 2097, chapter 258, and section 1 of Senate Bill No. 2125, chapter 431.

- j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;
 - k. An individual in a publicly owned or operated rest area or restroom;
 - l. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. ~~If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual; and~~
 - m. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.
3. This section does not prevent any political subdivision from enacting an ordinance that is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.
 4. Notwithstanding any other provision of law, a church or place of worship may not be held liable for any injury or death or damage to property caused by an individual permitted to carry a dangerous weapon concealed under this section.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 430

HOUSE BILL NO. 1279

(Representatives B. Koppelman, Rick C. Becker, Brabandt, D. Ruby)
(Senator O. Larsen)

AN ACT to create and enact a new subdivision to subsection 2 of section 62.1-02-05 of the North Dakota Century Code, relating to possession of a firearm; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁶ **SECTION 1.** A new subdivision to subsection 2 of section 62.1-02-05 of the North Dakota Century Code is created and enacted as follows:

An individual's storage of a firearm or dangerous weapon in a building that is owned or managed by the state or a political subdivision, provided:

- (1) The individual resides in the building;
- (2) The storage is inside the individual's assigned residential unit; and
- (3) The storage has been consented to by the state, the governing board, or a designee.

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

Approved April 11, 2017

Filed April 12, 2017

²¹⁶ Section 62.1-02-05 was also amended by section 1 of House Bill No. 1233, chapter 433, section 1 of House Bill No. 1273, chapter 429, section 3 of House Bill No. 1395, chapter 428, section 4 of Senate Bill No. 2097, chapter 258, and section 1 of Senate Bill No. 2125, chapter 431.

CHAPTER 431

SENATE BILL NO. 2125

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 62.1-02-05 of the North Dakota Century Code, relating to possession of a firearm or dangerous weapon; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁷ **SECTION 1. AMENDMENT.** Section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-05. Possession of a firearm or dangerous weapon at a public gathering - Penalty - Application.

1. An individual who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church, and a publicly owned or operated building.
2. This section does not apply to:
 - a. A law enforcement officer, or a correctional officer employed by the department of corrections and rehabilitation or by a correctional facility governed by chapter 12-44.1. A correctional officer employed by the department of corrections and rehabilitation may carry a firearm only as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may carry a firearm or dangerous weapon only as authorized in section 12-44.1-30;
 - b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
 - c. A competitor participating in an organized sport shooting event;
 - d. A gun or antique show;
 - e. A participant using a blank cartridge firearm at a sporting or theatrical event;
 - f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;

²¹⁷ Section 62.1-02-05 was also amended by section 1 of House Bill No. 1279, chapter 430, section 1 of House Bill No. 1233, chapter 433, section 1 of House Bill No. 1273, chapter 429, section 3 of House Bill No. 1395, chapter 428, and section 4 of Senate Bill No. 2097, chapter 258.

- g. A student and an instructor at a hunter safety class;
 - h. Private security personnel while on duty;
 - i. A state or federal park;
 - j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;
 - k. An individual in a publicly owned or operated rest area or restroom;
 - l. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual; and
 - m. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.
3. This section does not prevent any political subdivision from enacting an ordinance that is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.

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

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 432

HOUSE BILL NO. 1169

(Representatives Rick C. Becker, B. Koppelman, Magrum, Olson, Paur, Porter, Simons)
(Senators O. Larsen, Luick, Myrdal, Vedaa)

AN ACT to create and enact a new subdivision to subsection 2 of section 62.1-03-01 of the North Dakota Century Code, relating to carrying a handgun; to amend and reenact sections 62.1-04-02 and 62.1-04-04 of the North Dakota Century Code, relating to carrying concealed firearms or dangerous weapons; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 62.1-03-01 of the North Dakota Century Code is created and enacted as follows:

An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and has possessed for at least one year a valid driver's license or nondriver identification card issued by the department of transportation.

SECTION 2. AMENDMENT. Section 62.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

62.1-04-02. Carrying concealed firearms or dangerous weapons prohibited.

1. An individual, other than a law enforcement officer, may not carry ~~any~~ a firearm or dangerous weapon concealed unless the individual is licensed to do so or exempted under this chapter.
2. An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under this chapter and who has possessed for at least one year a valid driver's license or nondriver identification card issued by the department of transportation may carry a firearm concealed under this chapter.

²¹⁸ **SECTION 3. AMENDMENT.** Section 62.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

62.1-04-04. Producing license on demand.

1. Every ~~person~~individual while carrying a concealed firearm or dangerous weapon, for which a license to carry concealed is required, shall have on one's person the license issued by this or another state and shall give it to any law enforcement officer for an inspection upon demand by the officer. The failure of any ~~person~~individual to give the license to the officer is prima facie

²¹⁸ Section 62.1-04-04 was also amended by section 4 of House Bill No. 1395, chapter 428.

evidence that the ~~person~~individual is illegally carrying a firearm or dangerous weapon concealed.

2. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 shall inform a law enforcement officer of the individual's possession of a concealed weapon upon the initiation of a traffic stop or any other in-person contact initiated by a law enforcement officer.
3. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 must have on one's person a valid driver's license or nondriver identification card issued by the department of transportation or a digital image of one's valid driver's license or nondriver identification card on a mobile device and shall provide the license or card to any law enforcement officer for inspection upon demand by the officer.

Approved March 23, 2017

Filed March 24, 2017

CHAPTER 433

HOUSE BILL NO. 1233

(Representatives K. Koppelman, Rick C. Becker, Ertelt, Heinert, Jones, Kasper, B. Koppelman, Marschall, McWilliams, Olson)
(Senators Armstrong, D. Larson)

AN ACT to create and enact a new subdivision to subsection 2 of section 62.1-04-03 of the North Dakota Century Code, relating to licenses to carry concealed weapons; to amend and reenact subdivision m of subsection 2 of section 62.1-02-05 of the North Dakota Century Code, relating to possessing a firearm or dangerous weapon at a public gathering; to provide for a legislative management study; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁹ **SECTION 1. AMENDMENT.** Subdivision m of subsection 2 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

- m. A state, federal, or municipal court judge, a ~~district court magistrate~~ judge or judicial referee, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

SECTION 2. A new subdivision to subsection 2 of section 62.1-04-03 of the North Dakota Century Code is created and enacted as follows:

An individual who has a valid class 2 firearm license may apply to upgrade to a class 1 firearm license within five years from the date the class 2 firearm license was issued and upon successful completion of the requirements under this chapter. An individual who has a valid class 1 firearm license may request to convert the license to a class 2 firearm license before the expiration of the class 1 firearm license.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - FIREARMS AND WEAPONS LAWS. During the 2017-18 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code that relate to firearms and weapons, for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

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

²¹⁹ Section 62.1-02-05 was also amended by section 1 of House Bill No. 1279, chapter 430, section 1 of House Bill No. 1273, chapter 429, section 3 of House Bill No. 1395, chapter 428, section 4 of Senate Bill No. 2097, chapter 258, and section 1 of Senate Bill No. 2125, chapter 431.

Approved April 17, 2017

Filed April 17, 2017

WORKFORCE SAFETY AND INSURANCE

CHAPTER 434

HOUSE BILL NO. 1156

(Representative Keiser)
(Senator Klein)

AN ACT to amend and reenact section 65-01-02, subsection 8 of section 65-05-07, and section 65-05-08 of the North Dakota Century Code, relating to the definition of medical marijuana and prohibiting the payment of workers' compensation benefits for medical marijuana; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁰ **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions.

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the employee's wages are

²²⁰ Section 65-01-02 was also amended by section 1 of House Bill No. 1137, chapter 438.

not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 7. "Board" means the workforce safety and insurance board of directors.
 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
 9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the employee; or is under eighteen years of age and does not reside with the employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the employee for support. A child does not include a married child unless actually dependent on the employee as shown on the preceding year's income tax returns.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury.

b. The term does not include:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.
- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.

- (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus.
11. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.
 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
 13. "Director" means the director of the organization.
 14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
 15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
 16. "Employee" means a person who performs hazardous employment for another for remuneration unless the person is an independent contractor under the common-law test.

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers, except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or a child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.

(6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.

(7) An employer.

- c. Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the organization for the payment of premiums which are not paid by a subcontractor or independent contractor.
17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
- a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
 - j. A multidistrict special education unit.
 - k. An area career and technology center.
 - l. A regional education association.

18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
 - a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. "Health care provider" includes a doctor, ~~qualified nurse~~ ; pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
- 22-23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
- 23-24. "Parent" includes a stepparent and a parent by adoption.
- 24-25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
- 25-26. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an employee from performing any work and results from any one of the following conditions:
 - a. Total and permanent loss of sight of both eyes;
 - b. Loss of both legs or loss of both feet at or above the ankle;
 - c. Loss of both arms or loss of both hands at or above the wrist;

- d. Loss of any two of the members or faculties in subdivision a, b, or c;
- e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
- f. Third-degree burns that cover at least forty percent of the body and require grafting;
- g. A medically documented brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

- 26-27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
- 27-28. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- 28-29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- 29-30. "Temporary total disability" means disability that results in the inability of an employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
- 30-31. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.

~~31-32.~~ a. "Wages" means:

- (1) An employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.
 - (2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.
 - (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.
- b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

SECTION 2. AMENDMENT. Subsection 8 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

8. The organization may not pay for:

- a. Personal items that are for the injured employee's personal use or hygiene, including toothbrushes, slippers, shampoo, and soap.
- b. ~~Any~~A product or item ~~such as~~including clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider.
- c. ~~Any furniture~~Furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider.
- d. Vitamins and food supplements except in those cases in which the injury causes severe dietary problems, the injury results in the employee's paraplegia or quadriplegia, or the employee becomes wheelchair-bound due to the injury.
- e. Eye examinations unless there is a reasonable potential for injury to the employee's eyes as a result of the injury.
- f. Private hospital or nursing home rooms except in cases of extreme medical necessity and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the employee will pay the difference in cost.
- g. Serological tests, including VDRL and RPR, or other tests for venereal disease or pregnancy, or any other routine tests unless clearly necessitated by the injury.
- h. Aids or programs primarily intended to help the employee lose weight or stop smoking unless ordered by the organization.

- i. Home gymnasium or exercise equipment unless ordered by the organization.
- j. Memberships or monthly dues to health clubs, unless ordered by the organization.
- k. Massage, unless ordered by the organization.
- l. Medical marijuana.

SECTION 3. AMENDMENT. Section 65-05-08 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08. Disability benefits - Not paid unless period of disability is of five days' duration or more - Application required - Suspended during confinement - Duty to report wages.

~~No benefits~~Benefits may not be paid for disability, the duration of which is less than five consecutive calendar days. An employer may not require an employee to use sick leave or annual leave, or other employer-paid time off work, before applying for benefits under this section, in lieu of receiving benefits under this section, or in conjunction with benefits provided under this section, but may allow an employee to use sick leave or annual leave to make up the difference between the employee's wage-loss benefits and the employee's regular pay. If the period of disability is five consecutive calendar days' duration or longer, benefits must be paid for the period of disability provided that:

1. When disability benefits are discontinued, the organization may not begin payment again unless the injured employee files a reapplication for disability benefits on a form supplied by the organization. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon proof by the injured employee that:
 - a. The employee has sustained a significant change in the compensable medical condition;
 - b. The employee has sustained an actual wage loss caused by the significant change in the compensable medical condition; and
 - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
2. ~~All payments~~Payments of disability and rehabilitation benefits of any employee who is eligible for, or receiving, benefits under this title must be suspended when the employee is confined in a penitentiary, jail, youth correctional facility, or any other penal institution for a period of between seventy-two consecutive hours and one hundred eighty consecutive days. ~~All payments~~Payments of disability and rehabilitation benefits of any employee who is eligible for, or receiving, benefits under this title must be discontinued when the employee is confined in a penitentiary, jail, youth correctional facility, or any other penal institution for a period in excess of one hundred eighty consecutive days.
3. AnyAn employee who is eligible for, or receiving disability or rehabilitation benefits under this title shall report any wages earned, from part-time or

full-time work from any source. If an employee fails to report wages earned, the employee shall refund to the organization ~~any~~ disability or vocational rehabilitation benefits overpaid by the organization for that time period. To facilitate recovery of those benefits, the organization may offset future benefits payable, under section 65-05-29. If the employee willfully fails to report wages earned, the employee is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The organization periodically shall provide a form to all injured employees receiving disability or rehabilitation benefits which the injured employee must complete to retain eligibility for further disability or rehabilitation benefits, regardless of the date of injury or claim filing. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the organization whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits ~~also~~ must also report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.

4. An employee shall request disability benefits on a claim form furnished by the organization. Disability benefits may not commence more than one year prior to the date of filing of the initial claim for disability benefits.
5. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, 1991, irrespective of injury date.
6. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
7. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, the employee is not entitled to any disability or vocational rehabilitation benefits during the limitation of income or refusal to accept employment unless the organization determines the limitation or refusal is justified.
8. The organization may not pay disability benefits unless the loss of earning capacity exceeds ten percent. The injured employee may earn up to ten percent of the employee's preinjury average gross weekly earnings with no reduction in total disability benefits. The employee must report any earnings to the organization for a determination of whether the employee is within the limit set in this subsection.
9. Upon securing suitable employment, the injured employee shall notify the organization of the name and address of the employer, the date the employment began, and the amount of wages being received. If the injured employee is receiving disability benefits, the injured employee shall notify the organization whenever there is a change in work status or wages received.

10. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of fifteen dollars per week per child.
11. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the organization.
12. The organization may not pay wage loss benefits if the wage loss is related to the use or presence of medical marijuana.

SECTION 4. APPLICATION. Sections 2 and 3 of this Act apply to all claims regardless of date of injury.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 435

SENATE BILL NO. 2093

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact section 65-01-09, subsection 5 of section 65-01-16, and section 65-02-27 of the North Dakota Century Code, relating to subrogation liens, administrative orders, and the decision review office; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-09 of the North Dakota Century Code is amended and reenacted as follows:

65-01-09. Injury through negligence of third person - Option of employee - Organization subrogated when claim filed - Lien created.

When an injury or death for which compensation is payable under provisions of this title ~~shall have~~has been sustained under circumstances creating in some person other than the organization a legal liability to pay damages in respect thereto, the injured employee, or the injured employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person.

1. The organization is subrogated to the rights of the injured employee or the injured employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount ~~the organization~~ has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The organization also has a lien to the extent of fifty percent of the damages recovered up to a maximum of the total amount ~~the organization~~ has paid in compensation and benefits. The organization's subrogation interest or lien may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or the injured employee's dependents in the event of the injured employee's death. Such action shall be brought in the injured employee's or in the injured employee's dependents' own right and name and as trustee for the organization for the subrogation interest of the organization. However, if the director chooses not to participate in an action, and the decision is in writing, the organization has no subrogation interest and no obligation to pay fees or costs under this section and no lien.
2. If the injured employee or the injured employee's dependents do not institute suit within sixty days after date of injury, the organization may bring the action in its own name and as trustee for the injured employee or the injured employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the injured employee's dependents and retain as its lien the full amount ~~the organization~~ has paid in compensation and benefits. In the alternative, the organization may bring an action against a third party to recover its lien for benefits paid to the injured employee. Within sixty days after both the injured employee and the organization have declined to

commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the injured employee, or both, and in trust for the organization and for the injured employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship.

3. If the action is brought by the injured employee or the injured employee's dependents, or the employer as provided ~~above~~ in subsection 2, the organization shall pay fifty percent of the costs of the action, exclusive of attorney's fees, when such costs are incurred as the action progresses before recovery of damages. If there is no recovery of damages in the action, this shall be a cost of the organization to be paid from the organization's general fund. After recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the organization recovered to the total recovery in the action. The organization shall pay attorney's fees to the injured employee's attorney from the organization's general fund as follows:
 1. a. Twenty-five percent of the subrogation interest recovered for the organization before judgment; ~~and~~
 2. b. Thirty-three and one-third percent of the subrogation interest recovered for the organization when recovered through judgment entered as a result of a trial on the merits or recovered through binding alternative dispute resolution.
4. The above provisions as to costs of the action and attorney's fees are effective only when the injured employee advises the organization in writing the name and address of the injured employee's attorney, and ~~that the~~ injured employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If ~~a claimant~~ injured employee fails to pay the organization's subrogation interest and lien within thirty days of receipt of a recovery in a third-party action, the organization's subrogation interest is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the injured employee's dependents, no costs or attorney's fees will be paid from the organization's subrogation interest and the organization's lien is the full amount of the damages recovered up to a maximum of the total amount it has paid.
5. The organization's lien is created upon first payment of benefits. The lien attaches to all claims, demands, settlement proceeds, judgment awards, or insurance payable by reason of a legal liability of a third person. If the organization does not receive payment of its lien amount within thirty days of the payment of any recovery and if the organization has served, by regular mail, written notice of its lien upon the injured employee or the injured employee's dependents and upon the third person, ~~the third person~~, the insurer of the third person, the injured employee or injured employee's dependents, and the attorney of the injured employee or injured employee's dependents are liable to the organization for the lien amount. A release or satisfaction of any judgment, claim, or demand given by the injured employee or the injured employee's dependents is not valid or effective against the lien. An action to collect the organization's lien amount must be commenced within one year of the organization first possessing actual knowledge of a recovery.

6. Upon receipt of its subrogation interest, the organization shall credit the medical expense assessment paid by the employer under section 65-04-04.4 to the employer's account.
7. If the organization's lien is not recognized by another jurisdiction, the organization may issue a decision, including a decision demanding repayment from the injured employee, of all benefits and compensation the organization has made on behalf of the injured employee, including costs and administrative fees.

SECTION 2. AMENDMENT. Subsection 5 of section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

5. Within sixty days afterAfter receiving a request for reconsideration, the organization shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration. If the organization does not issue an order within sixty days of receiving a request for reconsideration, any interested party may request, and the organization shall promptly issue, an appealable determination.

SECTION 3. AMENDMENT. Section 65-02-27 of the North Dakota Century Code is amended and reenacted as follows:

65-02-27. Decision review office.

The organization's decision review office is established. The decision review office is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The decision review office shall provide assistance to an injured employee who has filed a claim, which may include acting on behalf of an injured employee who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing an injured employee of the effect of decisions made by the organization, an injured employee, or an employer under this title. ~~The decision review office shall provide assistance to employees, upon request, in cases of constructive denial or after a vocational consultant's report has been issued.~~ The organization shall employ a director of the decision review office and other personnel determined to be necessary for the administration of the office. ~~A person~~An individual employed to administer the decision review office may not act as an attorney for an injured employee. The organization may not pay attorney's fees to an attorney who represents an injured employee in a disputed claim before the organization unless the injured employee has first attempted to resolve the dispute through the decision review office. A written request for assistance by an injured employee who contacts the decision review office within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the injured employee, sent by regular mail, that the decision review office's assistance to the injured employee is completed. The information contained in a file established by the decision review office on an injured employee's disputed claim, including communications from an injured employee, is privileged and may not be released without the injured employee's permission. Information in the file containing the notes or mental impressions of decision review office staff is confidential and may not be released by the decision review office.

SECTION 4. APPLICATION. Section 1 of this Act applies to all claims regardless of date of injury.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 436

SENATE BILL NO. 2048

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact sections 65-02-08 and 65-10-03 of the North Dakota Century Code, relating to workers' compensation attorney's fees and costs; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-08 of the North Dakota Century Code is amended and reenacted as follows:

65-02-08. Rulemaking power of the organization - Timeliness for issuance of decision - Fees prescribed by organization - Attorney's fees and costs.

1. The organization shall adopt rules necessary to carry out this title. All fees on claims for medical and hospital goods and services provided under this title to an injured employee must be in accordance with schedules of fees adopted by the organization. Before the effective date of any adoption of, or change to, a fee schedule, the organization shall hold a public hearing, which is not subject to chapter 28-32. ~~The organization shall establish, by administrative rule, costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative order reducing or denying benefits.~~
2. The organization shall issue a decision within sixty days ~~following~~ the date ~~when~~ all elements of initial filing or notice of reapplication of claim ~~have been~~ satisfied or a claim for additional benefits over and above benefits previously awarded ~~has been~~ made. ~~Satisfaction~~ The organization's administrative rules must define satisfaction of elements of filing ~~must be defined by administrative rule.~~ The organization shall pay an injured employee's attorney's fees and costs from the organization's general fund.
3.
 - a. ~~By administrative rule, the organization shall establish costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative or judicial order reducing or denying benefits.~~
 - b. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The amount of the attorney's fees must be determined in the same manner as prescribed by the organization for attorney's fees. The total amount of attorney fees paid by the organization may not exceed the fee cap established for the highest appellate level at which the injured employee prevails.
 - c. The organization shall pay an attorney's fees and costs ~~when~~:

1. ~~Theif the injured employee has prevailed in binding dispute resolution under section 65-02-20:~~
2. ~~The, the injured employee has prevailed after an administrative hearing under chapter 28-32, or the injured employee prevailed at the district or supreme court as provided for under section 65-10-03. The organization shall pay the attorney's fees and costs at the time the injured employee prevails. The organization may not condition payment of attorney's fees and costs upon the injured employee prevailing upon any future appeal.~~
 - d. ~~An injured employee has prevailed only when does not prevail unless an additional benefit, previously denied, is paid. An injured employee does not prevail on a remand for further action or proceedings unless that injured employee ultimately receives an additional benefit as a result of the remand.~~
 - e. ~~Notwithstanding the requirement under subdivision d that an additional benefit be paid or received, an injured employee who prevails at the administrative or district court level is eligible for attorney's fees and costs for prevailing at that level, regardless of whether the organization ultimately prevails upon the organization's appeal of an administrative or district court order.~~
 - f. ~~This sectionsubsection does not prevent an injured employee or an employer from hiring or paying an attorney; however, the employee's attorney may not seek or obtain costs or attorney's fees from both the organization and the employee relative to the same claim.~~
 - g. ~~All disputes relating to payment or denial of an attorney's fees or costs must be submitted to the court, hearing officer, or arbitrator for decision, but a court, hearing officer, or arbitrator may not order that the maximum fees be exceeded.~~
 - h. ~~The organization shall pay an injured employee's attorney's fees and costs from the organization's general fund. The organization is liable for its costs on appeal if the decision of the organization is affirmed.~~

SECTION 2. AMENDMENT. Section 65-10-03 of the North Dakota Century Code is amended and reenacted as follows:

65-10-03. Cost of appeal and attorney's fees fixed by the organization.

The organization shall pay the cost of the judicial appeal and the attorney's fees for an injured employee's attorney ~~whenif the employee prevails as provided under section 65-02-08. The employee has prevailed when any part of the decision of the organization is reversed and the employee receives an additional benefit as a result. An injured employee does not prevail on a remand for further action or proceedings unless the injured employee ultimately receives an additional benefit. The organization shall pay the attorney's fees from the organization's general fund. The amount of the attorney's fees must be determined in the same manner as prescribed by the organization for attorney's fees, and the amount of attorney's fees already allowed in administrative proceedings before the organization must be taken into consideration. The organization shall establish, pursuant to section 65-02-08, a maximum fee to be paid in an appeal. The maximum fee set by the organization may be exceeded upon application of the injured employee to the organization, upon a finding that the claim had clear and substantial merit, and that the legal or factual~~

issues involved in the appeal were unusually complex, but a court may not order that the maximum fee be exceeded. ~~Notwithstanding the foregoing, the organization is liable for its costs on appeal if the decision of the organization is affirmed.~~

SECTION 3. APPLICATION. This Act applies to administrative and judicial appeal decisions issued on and after the effective date of this Act.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 437

SENATE BILL NO. 2094

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact section 65-04-04.4 of the North Dakota Century Code, relating to medical expense assessments; to amend and reenact sections 65-04-22, 65-04-26.1, 65-04-32, and subsections 2, 3, and 4 of section 65-04-33 of the North Dakota Century Code, relating to securing premium payments, correct cross references, employer noncompliance, and employer false statements; to repeal section 65-05-07.2 of the North Dakota Century Code, relating to medical expense assessments; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 65-04-04.4 of the North Dakota Century Code is created and enacted as follows:

65-04-04.4. Medical expense assessments.

The employer shall reimburse the organization for all medical expenses related to a compensable injury to an employee if the expenses do not exceed two hundred fifty dollars and shall reimburse the organization for the first two hundred fifty dollars of medical expenses when the expenses exceed two hundred fifty dollars. If a claim for benefits is filed with the organization by midnight central time on the first business day following the workplace injury, the organization shall pay the first two hundred fifty dollars of medical expenses. A claim is filed by submitting a form furnished by the organization or by another method designated by the organization. If a claim for benefits is filed with the organization more than fourteen days from the date the employer received notice of the workplace injury from the employee, the employer shall reimburse the organization for the first three hundred fifty dollars of medical expenses if the expenses exceed three hundred fifty dollars. If the organization determines the claim is compensable, the organization shall pay the medical expenses associated with the claim and notify the employer of payments to be made by the employer under this section. If the employer does not pay the organization within thirty days of notice by the organization, the organization may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer. The organization shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. Except as otherwise provided, if the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the organization shall pay all further medical expenses. This section is effective for all compensable injuries that occur after July 31, 1995. This section does not apply to compensable injuries paid under sections 65-06.2-04 and 65-06.2-08.

SECTION 2. AMENDMENT. Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

65-04-22. Organization may make premium due immediately - When premium is in default.

The organization may require payment of a premium, including an advance premium, security deposit, or any other instrument that is mutually acceptable to the organization and the employer, within any time which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer. The premium, whether paid in full or in installments, shall be in default one month from the payment due date specified in the premium billing statement.

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer uninsured at any time after forty-five days have passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage to any employer that has been determined to be uninsured under this section or where a premium delinquency remains unresolved.

SECTION 3. AMENDMENT. Section 65-04-26.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26.1. Corporate officer personal liability.

1. An officer or director of a corporation, or manager or governor of a limited liability company, or partner of a limited liability partnership, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums or reimbursements under this title and who fails to file the reports or to make payments as required, is personally liable for premiums under this chapter and reimbursement under section ~~65-05-07-265-04-04.4~~, including interest, penalties, and costs if the corporation or limited liability company does not pay to the organization those amounts for which the corporation or limited liability company is liable.
2. The personal liability of any person as provided in this section survives dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation or limited liability company must be considered earned from any person determined to be personally liable.
3. After review of the evidence in the employer's file, the organization shall determine personal liability under this section. The organization shall issue a decision under this section pursuant to section 65-04-32.

SECTION 4. AMENDMENT. Section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

65-04-32. Decisions by organization - Disputed decisions.

Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures apply when the organization issues a decision under this chapter or section ~~65-05-07-265-04-04.4~~:

1. The organization may issue a notice of decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The organization shall include with the decision a notice of the employer's right to reconsideration.
2. An employer has thirty days from the 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 the 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.

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.
4. A party has thirty days from the date of service of an administrative order to file a written request for rehearing. The request must state specifically each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that chapter does not conflict with this section.
6. An employer may appeal a posthearing administrative order to district court in accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.

SECTION 5. AMENDMENT. Subsections 2, 3, and 4 of section 65-04-33 of the North Dakota Century Code are amended and reenacted as follows:

2. An employer who willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or who willfully fails to secure coverage for employees, is liable to the state in the amount of ~~two~~five thousand dollars plus three times the difference between the premium paid and the amount of premium the employer should have paid. The organization shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the organization shall deposit a penalty collected under this subsection to the credit of the workforce safety and insurance fund. An employer who willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or who willfully fails to secure coverage for employees, is guilty of a class A misdemeanor. If the premium due exceeds ~~five hundred one thousand~~ dollars, the penalty for willful failure to secure coverage or willful misrepresentation to the organization or its representative is a class C felony. If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workforce safety and insurance coverage under this subsection. In addition to the penalties prescribed by this subsection, the organization may initiate injunction proceedings as provided for in this title to enjoin an employer from unlawfully employing uninsured workers. The cost of an investigation under this subsection which results in a

criminal conviction may be charged to the employer's account and collected by civil action.

3. An employer who willfully makes a false statement in an attempt to preclude an injured worker from securing benefits or payment for services is liable to the state in the amount of five thousand dollars. The organization shall collect a civil penalty imposed under this section in a civil action in the name of the state, and the organization shall deposit a penalty collected under this section to the credit of the workforce safety and insurance fund. A willful violation of this section is a class A misdemeanor. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.
- 3.4. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year beginning on the date the organization became aware of the employer's uninsured status, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent. In addition, the organization may assess a penalty of five thousand dollars for each premium period the employer was uninsured. The organization may not assess a penalty for more than six years of past noncompliance. The organization may assess additional penalties, from the date the organization became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. In addition, the organization may assess an employer the actual cost and reserves of any claim attributable to the employer during the time the employer was uninsured. The penalties for employers are in addition to any other penalties by law. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.
- 4.5. An employer who fails or refuses to furnish to the organization the annual payroll report and estimate or who fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of two thousand dollars. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, annual payroll reports, and other information required by the organization under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty not to exceed one hundred dollars for each day until the organization receives the records, in addition to the five thousand dollar penalty set forth ~~above~~ subsection 4. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty. The organization shall notify an employer by regular mail of the amount of premium and penalty due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the

action of the organization regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.

SECTION 6. REPEAL. Section 65-05-07.2 of the North Dakota Century Code is repealed.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 438

HOUSE BILL NO. 1137

(Representative Keiser)

AN ACT to create and enact sections 65-04-26.2 and 65-04-27.2 of the North Dakota Century Code, relating to workers' compensation requirements for general contractors and cease and desist orders; to amend and reenact subsection 16 of section 65-01-02 and section 65-04-19 of the North Dakota Century Code, relating to the workers' compensation definition of employee, assignment of rate classification, and calculation of premium; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²¹ **SECTION 1. AMENDMENT.** Subsection 16 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

16. "Employee" means a ~~person~~an individual who performs hazardous employment for another for remuneration unless the ~~person~~individual is an independent contractor under the common-law test.

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of ~~the several counties of this state~~any county, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers, except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed; ~~a~~A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) ~~Any person~~An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that ~~person's~~individual's employer.

²²¹ Section 65-01-02 was also amended by section 1 of House Bill No. 1156, chapter 434.

- (2) ~~Any person~~An individual who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or ~~at~~the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) ~~Any~~A real estate broker or real estate salesperson, provided the ~~person~~individual meets the following three requirements:
- (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person ~~or firm~~ for whom ~~whom~~which the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) ~~Any~~An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.
- (7) An employer.
- e. ~~Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the organization for the payment of premiums which are not paid by a subcontractor or independent contractor.~~

SECTION 2. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Organization to assign rate classifications, calculate premium, and determine premium due from employer - Mailing of premium billing statement as notice of amount due.

1. The organization shall assign rate classifications based on information provided to the organization by the employer or information gathered through the organization's investigative process.
2. The organization shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the organization received information that an employer is subject to the title.
3. If the organization does not receive the annual payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information, the organization may calculate premium using the wage cap in effect per employee reported in the previous payroll report, using information obtained through the organization's investigative process, or using data obtained from job service North Dakota.
4. ~~The organization shall order the premium to be paid into the fund and shall mail a copy of the premium billing statement to the employer. Mailing of the premium billing statement constitutes notice to the employer of the amount due.~~

SECTION 3. Section 65-04-26.2 of the North Dakota Century Code is created and enacted as follows:

65-04-26.2. General contractor liability for subcontractors and independent contractors.

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor if the subcontractor or independent contractor does not secure coverage as required under this title. A general contractor is liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage. The general contractor is liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.
3. If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage arises from a single project with a general contractor, the liability of the general contractor is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the

subcontractor or independent contractor failed to secure coverage, the organization shall set the amount of the the general contractor's liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.

4. The definition of the term "contractor" under section 43-07-01 applies to this section.

SECTION 4. Section 65-04-27.2 of the North Dakota Century Code is created and enacted as follows:

65-04-27.2. Cease and desist order - Civil penalty.

1. If it appears to the organization an employer is without workers compensation coverage or is in an uninsured status in violation of this title, by registered mail the director may issue to the employer an order to cease and desist and a notice of opportunity for hearing. Within thirty days of receipt of the order, a party to the order may make a written request for a hearing. If a hearing is not requested, the order is final and may not be appealed. If a hearing is requested, the hearing must be conducted in accordance with chapter 28-32 to the extent that chapter does not conflict with this section and the order remains in effect until the hearing officer renders a decision. If an employer fails to appear at a hearing requested under this section, that employer defaults and the allegations contained in the cease and desist order are deemed true.
2. In addition to the penalties in section 65-04-33, a person that employs an individual in violation of a cease and desist order issued under this section is subject to a penalty of ten thousand dollars and to a penalty of one hundred dollars per day for each day the violation continues. The organization may reduce the penalties under this section.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 439

HOUSE BILL NO. 1086

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact subsection 5 of section 65-05-08.1, subsection 1 of section 65-05-09.1, section 65-05-28, subsection 2 of section 65-05-33, and section 65-05.1-06.3 of the North Dakota Century Code, relating to notice to treating doctor, social security offset, criminal offense for filing of false claim, and vocational rehabilitation pilot program reports; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 65-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. Prior to the expiration of a period of disability certified by a doctor, if a report certifying an additional period of disability has not been filed, or upon receipt of a report or other evidence indicating an injured employee who is receiving disability benefits has been or will be released to return to work, the organization shall send a notice to that employee of the organization's intention to discontinue benefits, including an explanation of the reason for discontinuing benefits, an explanation of the injured employee's right to respond, and the procedure for filing the required report or challenging the proposed action. ~~A copy of the notice must be mailed to the employee's doctor.~~ Thereafter, if the required certification is not filed, the organization shall discontinue disability benefits, effective twenty-one days after the date the notice of intention to discontinue benefits is mailed or the date on which the injured employee actually returned to work, whichever occurs first.

SECTION 2. AMENDMENT. Subsection 1 of section 65-05-09.1 of the North Dakota Century Code is amended and reenacted as follows:

1. If the receipt of social security benefits results in an overpayment of temporary or permanent total disability benefits by the organization, a refund of any overpayment must be made by the injured ~~worker~~employee or that overpayment must be taken from future ~~temporary total or permanent total disability benefits or~~ permanent partial impairment awards, or personal reimbursements on the current claim or any future claim filed, at a recovery rate to be determined by the organization.

SECTION 3. AMENDMENT. Section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant~~injured~~ employee refuses to reasonably participate.

~~Every employee who sustains an injury~~An injured employee may select a doctor of that ~~employee's~~injured employee's choice to render initial treatment. Upon a

determination that the injured employee's injury is compensable, the organization may require the injured employee to begin treating with another doctor to better direct the medical aspects of the injured employee's claim. The organization shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the organization's request, the injured employee shall select a doctor from the list. An injured employee shall follow the directives of the doctor or health care provider who is treating the injured employee as chosen by the injured employee at the request of the organization and comply with all reasonable requests during the time the injured employee is under medical care. Providing further that:

1. No injured employee may change from one doctor to another while under treatment or after being released, without the prior written authorization of the organization. Failure to obtain approval of the organization renders the injured employee liable for the cost of treatment and the new doctor will not be considered the attending doctor for purposes of certifying temporary disability.
 - a. Any injured employee requesting a change of doctor shall file a written request with the organization stating all reasons for the change. Upon receipt of the request, the organization will review the injured employee's easeclaim and approve or deny the change of doctor, notifying the injured employee and the requested doctor.
 - b. Emergency care or treatment or referral by the attending doctor does not constitute a change of doctor and does not require prior approval of the organization.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. A personal reimbursement requested under this subsection is a managed care decision under section 65-02-20, subject to the appeal process as provided for in section 65-02-20. Providing further that:
 - a. Payment for mileage or other travel expenses may not be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
 - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization may pay no more than actual cost of lodging, if actual cost is less;
 - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
 - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the injured employee's injury prevents travel alone and the inability is medically substantiated; and

- e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.
3. The organization may at any time require an injured employee to submit to an independent medical examination or independent medical review by one or more duly qualified doctors designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified doctor licensed in the state in which the injured employee resides to conduct the examination before designating a duly qualified doctor licensed in another state or shall make a reasonable effort to designate a duly qualified doctor licensed in a state other than the injured employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the injured employee's residence. An independent medical examination and independent medical review must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. An independent medical examination contemplates an actual examination of an injured employee, either in person or remotely if appropriate. An independent medical review contemplates a file review of an injured employee's records, including treatments and testing. The injured employee may have a duly qualified doctor designated by that employee present at the examination or later review the written report of the doctor performing the independent medical examination, if procured and paid for by that injured employee. Providing further that:
 - a. In case of any disagreement between doctors making an examination on the part of the organization and the injured employee's doctor, the organization shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the organization.
 - b. The injured employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the injured employee is working and loses gross wages from the injured employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an injured employee, or the injured employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination or treatment, or refuses to reasonably participate in medical or other treatments or examinations, the injured employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the injured employee.
5. If an injured employee undertakes activities, whether or not in the course of employment, which exceed the treatment recommendations of the injured employee's doctor regarding the work injury, and the doctor determines that the employee's injury or condition has been aggravated or has worsened as a result of the injured employee's activities, the organization may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer. An employer's account may not be charged with the expenses of an aggravation or worsening of a work-related injury or condition unless the employer knowingly required the injured

employee to perform activities that exceed the treatment recommendations of the injured employee's doctor.

SECTION 4. AMENDMENT. Subsection 2 of section 65-05-33 of the North Dakota Century Code is amended and reenacted as follows:

2. If any of the acts in subsection 1 are committed to obtain, or pursuant to a scheme to obtain, more than ~~five hundred~~ one thousand dollars in benefits or payment for services, the offense is a class C felony.

SECTION 5. AMENDMENT. Section 65-05.1-06.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.3. Rehabilitation services pilot programs - Reports.

The organization may implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the injured employee in making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the injured employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program and the state agency shall cooperate with the organization in implementing the pilot program. The organization shall include in its ~~annual~~ biennial report to the workers' compensation review committee under section 54-35-22 status reports on current pilot programs.

SECTION 6. APPLICATION. Section 3 of this Act applies to all claims regardless of date of injury.

Approved March 2, 2017

Filed March 3, 2017

VETOED MEASURES

CHAPTER 440

HOUSE BILL NO. 1004

(Appropriations Committee)

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

VETO

April 25, 2017

Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1004 and return it to the House unsigned.

HB 1004 was amended in conference committee. The critical details of the amendment, as shown in the Statement of Purpose of Amendment, eliminate a position held by an identifiable, classified employee (position number 00000510-1) in the State Auditor's office.

We support HB 1004's appropriation and FTE levels and we support the State Auditor's rights and responsibilities to manage personnel and performance in his office. We ask that the Auditor's appropriations be passed at the identical levels of dollars and FTEs but without reference in the Statement of Purpose of Amendment to an employee-specific position number.

The responsibility for execution and administration of state business lies within the executive branch. Each state agency, through its elected or appointed executive officer, is charged with administering the business of that agency. This responsibility includes the administration of personnel decisions, including filling vacant positions, coaching employees, administering discipline appropriately and, as necessary, terminating employees. An agency with classified employees must handle personnel issues pursuant to NDCC Chapter 54-44.3 and NDAC Article 4-07.

The elimination of an identified employee in the Auditor's office, on the Statement of Purpose of Amendment, violates the separation of powers and the fundamental due process rights afforded to all classified employees in the State of North Dakota.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,655,646	\$111,666	\$11,767,312
Operating expenses	1,176,806	(34,023)	1,142,783
North Dakota university system information technology security audits	200,000	(200,000)	0
Information technology consultants	250,000	(250,000)	0
Total all funds	\$13,282,452	(\$372,357)	\$12,910,095
Less estimated income	3,505,870	(94,383)	3,411,487
Total general fund	\$9,776,582	(\$277,974)	\$9,498,608
Full-time equivalent positions	59.80	(3.80)	56.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$140,696, of which \$104,201 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

Disapproved April 25, 2017

Filed May 11, 2017

CHAPTER 441

HOUSE BILL NO. 1153

(Representatives Delzer, Carlson, Kempenich, Lefor, Pollert, Seibel)
(Senator G. Lee)

AN ACT to amend and reenact section 54-06-31 of the North Dakota Century Code, relating to state employee recruitment and retention bonus programs.

VETO

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1153 and returned it to the House. As the chief executive of the state, the Governor is responsible for the administration of state business. Article V, § 7 ND Const. This responsibility includes the duty to fill vacant positions and supervise the conduct of executive and ministerial officers. The Legislature can neither add to nor diminish these constitutional duties.

HB 1153 seeks to restrict the authority of the Governor, and only the Governor, to pay recruitment and retention bonuses to cabinet leaders and the Governor's staff. HB 1153 places unprecedented and intentional restrictions on the Governor's ability to fulfill the constitutional duty to recruit and retain cabinet agency directors and key support personnel. These restrictions intrude upon the operations of the executive branch and violate the separation of governmental powers established by the North Dakota Constitution.

The importance of recruitment and retention bonus programs was acknowledged by the Fifty-Seventh Legislative Assembly in enacting Section 54-06-31 of the Century Code. A 2009 amendment added subsection 5, to specifically recognize the importance of recruitment and retention tools for "hard-to-fill occupation[s]", to respond to market forces and competition, or to avoid losing a highly performing incumbent with rare or special skills. Recruiting and retaining experienced and transformational cabinet leaders is an essential step in delivering more efficient government services.

Collectively our seventeen cabinet agencies employ more than 6,000 state workers. These agencies are complex, widely diverse and provide meaningful, specialized, and essential services on behalf of our state citizens. The cabinet agency leadership positions meet the "hard-to-fill" criteria described in NDCC Section 54-06-31 (5).

Further, Cabinet leaders and the Governor's staff are unclassified positions, meaning they are employed "at will." This is different from the vast majority of state employment positions which are "classified" and therefore hold more job protections. As unclassified positions, the Governor's staff and cabinet leaders serve at the pleasure of the Governor. And unlike classified positions, every four years with the election cycle there is increased risk of turnover for these key positions.

To explicitly remove a human resources tool for these specialized, hard-to-fill, and at-will employees will impair the Governor's ability to attract and retain the leadership and staff necessary to effectively execute the duties of the office now and for future governors.

The thriving private sector creates ample competition for attracting and retaining leadership, with more flexibility and higher salary levels than comparable leadership and senior staff roles in the public sector. Any movement to erode the Governor's flexibility will further reduce state government's ability to bring much-needed private sector experience into cabinet leadership positions.

The proposed restrictions upon this administration set forth in HB 1153 serve no constructive purpose. This bill violates the constitutional exercise of executive authority to manage state agencies and to carefully budget appropriated resources. For these reasons, I have vetoed HB 1153.

As Governor, I understand the importance of strong fiscal policies and have proposed more than \$1.5 billion in reduced spending for the next biennium. We are committed to partnering with the Legislature to achieve these costs reductions, even as we continue to search for new, more cost-effective solutions to delivering services and operating our state.

There are many steps we still need to take to improve the efficiency and performance of state government, but HB 1153 is a step in the wrong direction.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-31 of the North Dakota Century Code is amended and reenacted as follows:

54-06-31. State employee recruitment and retention bonus programs - Criteria - Limitations.

State agencies may develop programs to provide bonuses to recruit or retain employees in hard-to-fill occupations.

1. State agencies may pay recruitment and retention bonuses under this section only if:
 - a. The agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving bonuses;
 - b. The agency has filed a copy of the written policy with the North Dakota human resource management services; and
 - c. The agency reports to the North Dakota human resource management services each bonus provided to an employee under the program.

2. A bonus paid under this section to an employee in the governor's office or any state officer appointed by the governor may not exceed ten percent of the employee's annual salary or five thousand dollars, whichever is less.
3. State agencies must fund bonus programs from within the agency salaries and wages budget.
- ~~3-4.~~ The North Dakota human resource management services shall report periodically to the legislative management on the implementation, progress, and bonuses provided under agency recruitment and retention bonus programs.
- ~~4-5.~~ Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.
- ~~5-6.~~ As used in this section, a hard-to-fill occupation includes an occupation or position in which demand exceeds supply, special qualifications are required, competition with other employers is the strongest, there is a risk of losing an incumbent with rare skills, the position is filled by a highly skilled employee who is in high demand in the marketplace, loss of the employee would result in significant replacement costs, the position is filled by key personnel, or the position has other unique recruitment or retention issues identified and documented by the appointing authority.

Disapproved March 27, 2017

Filed May 11, 2017

CHAPTER 442**HOUSE BILL NO. 1201**

(Representatives Sukut, Guggisberg, Hatlestad, Trottier)
(Senators Bekkedahl, Kreun)

AN ACT to create and enact a new subsection to section 47-16-13.1 of the North Dakota Century Code, relating to landlord responsibilities regarding carbon monoxide detection devices; to amend and reenact section 23-13-15 and subsection 4 of section 54-21.3-03 of the North Dakota Century Code, relating to the installation of carbon monoxide and smoke detection alarms; to provide a penalty; and to provide an effective date.

VETO

April 26, 2017

The Honorable Larry Bellew
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

Re: Veto of HB 1201

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1201 and return it to the House of Representatives unsigned.

An important principal of America's success as a nation is the principal of individual responsibility.

While carbon monoxide represents a very small, yet measurable life safety risk in residential rental property, this risk can and should be managed by local building codes, property owners and renters themselves, rather than more burdensome statewide regulations.

There are simple, low-cost non-governmental solutions to this risk, including the use of carbon monoxide monitors available at local retail stores.

For these reasons, I have vetoed House Bill 1201.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-15 of the North Dakota Century Code is amended and reenacted as follows:

23-13-15. Smoke and carbon monoxide detection systemsalarms for residential rental property - Penalty.

1. All residential rental property that includes a wood or other fuel-fired fireplace, heater, or appliance or an attached garage, with the exception of property covered by section 23-09-02.1 or unless exempted by state and local building and fire codes, must be equipped with smoke carbon monoxide detection systemsalarms or other approved alarm systems for the protection of occupants of the property. ~~Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The installation and maintenance must be in accordance with state and local building and fire codes.~~ All residential rental property, with the exception of property covered by section 23-09-02.1, must be equipped with smoke detection alarms or other approved alarm systems for the protection of occupants of the property. The state fire marshal and local fire departments shall provide information concerning the installation of smoke and carbon monoxide detection systemsalarms to owners of residential rental properties. ~~A system~~ Alarms installed in a single-family rental dwelling must be maintained and inspected by the tenant occupying the single-family rental dwelling. In other dwellings, the landlord is responsible for installation and ensuring the proper operation of the systemalarms upon the occupancy of each new tenant. The tenant is responsible for maintaining the systemalarms during the tenant's occupancy.
2. The landlord of a residential dwelling ~~unit~~ shall provide an approved visual smoke and carbon monoxide detection systemalarm or other visual alarm system for fire and carbon monoxide if requested in writing by a tenant who is deaf. A landlord is not subject to this subsection if the rental property of that landlord does not exceed one building and that building does not exceed four residential dwelling ~~units~~ dwellings.
3. Nothing in this section may be construed to alter the provisions of chapter 54-21.3 regarding smoke detection and carbon monoxide systems or alarm systems alarms for newly constructed residences.
4. Any property owner who willfully fails to install a systemsmoke detection alarm as required by this section is guilty of a class B misdemeanor.
5. A landlord may charge a tenant for damages equivalent to three times the cost associated with replacing an alarm that was damaged during the time the tenant occupied the property.
6. A landlord may not be held liable for injury or damages caused as the result of an inoperable carbon monoxide alarm.

SECTION 2. A new subsection to section 47-16-13.1 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 2 and section 47-16-13, if a carbon monoxide detection device is found to be inoperable, the landlord of a residential dwelling unit shall correct the situation within thirty days after receiving written

notification from the tenant, state fire marshal, fire chief, building inspector, or other fire, building, or safety official. If the landlord fails to correct the situation within the thirty days, the tenant may repair the carbon monoxide detection device or purchase and install a carbon monoxide detection device and may deduct the repair cost or purchase price from the next rental payment made by the tenant. A landlord may require a tenant who has a residency of longer than thirty days to provide the battery for a battery-operated carbon monoxide detection device.

SECTION 3. AMENDMENT. Subsection 4 of section 54-21.3-03 of the North Dakota Century Code is amended and reenacted as follows:

4. a. The state building code or a building code adopted by a city, township, or county may not include a requirement that fire sprinklers be installed in a ~~single-family~~single-family dwelling or a residential building that contains no more than two dwelling units.
- b. The state building code, plumbing code, electrical code, or an equivalent code adopted by a ~~political subdivision~~city, township, or county 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 pre-engineered 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.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on January 1, 2019.

Disapproved April 26, 2017

Filed May 11, 2017

CHAPTER 443**SENATE BILL NO. 2119**

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

AN ACT authorizing the state of North Dakota acting through job service North Dakota to sell or lease certain property; to provide for a study; to provide a statement of legislative intent; to provide reports to the budget section; and to declare an emergency.

VETO

May 1, 2017

Honorable Brent Sanford
President of the Senate
North Dakota Senate
North Dakota State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2119, a bill related to certain Job Service North Dakota properties.

Sections 2, 3, 4 and 5 of Senate Bill 2119 detail specific lease prices, building sale prices, preference for specific lessees and purchasers of state owned buildings. Before any sale or lease of state property, a transparent, arms length offering of any vacant space should be considered rather than pre-specifying occupants. Further, a thorough analysis of these buildings, fair market lease and sale valuations, and applicable state and federal statutes should be completed versus pre-determining lease or sale price.

The responsibility for execution and administration of state business lies exclusively within the executive branch of state government. N.D. Const. art. V. Each state agency, through its elected or appointed executive officer, is charged with administering the business of that agency. This responsibility includes the location of its staff and use of its location(s) to optimize value to North Dakota taxpayers.

Our office will instruct Job Service North Dakota, in cooperation with Office of Management and Budget, to proceed with a thorough, comprehensive, transparent, economic study of Job Service locations. We will seek the input of other state agencies, including the Attorney General's office, regarding space needs and potential savings as a part of this study and will consider them as potential tenants for all vacant space.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STUDY OF PROPERTIES BY JOB SERVICE NORTH DAKOTA - BUDGET SECTION REPORT. During the 2017-18 interim, job service North Dakota shall study the feasibility and desirability of selling its properties in Rolla and Minot and the main office in Bismarck. The study must identify historical data and documentation regarding the purchase price and funding source of each property and provide for an appraisal of each property in accordance with section 54-01-05.2. The study must include a determination of the allowable sales price for each property in accordance with state and federal law. Job service North Dakota shall collaborate with the office of management and budget to develop a proposal for the attorney general's office and highway patrol to lease portions of the Minot property from job service North Dakota, while allowing job service North Dakota to continue occupying a portion of the property necessary for normal business operations. Job service North Dakota shall report its findings and recommendations to the budget section before July 1, 2018.

SECTION 2. LEASE OF PROPERTY BY JOB SERVICE NORTH DAKOTA - ROLLA PROPERTY. Beginning July 1, 2017, job service North Dakota may lease to Rolette County, as allowed by state and federal law, Parcel #29-0001-29089-000-00006700-2904000000; city of Rolla OTS Lot 17 Block 7 and Parcel #29-0001-29090-000-00006701-2904000000; city of Rolla OTS Lot 18 Block 7 in the city of Rolla, Rolette County, North Dakota. Job service North Dakota may lease the property to Rolette County for a sum of one dollar until the property is sold. The lease must provide that all operational and maintenance costs related to the property are the responsibility of Rolette County until the property is sold.

SECTION 3. SALE OF PROPERTY BY JOB SERVICE NORTH DAKOTA - ROLLA PROPERTY - BUDGET SECTION APPROVAL. If a sale of the property is determined feasible based on the study required in section 1 of this Act and subject to budget section approval, the state of North Dakota acting through job service North Dakota may sell and convey Parcel #29-0001-29089-000-00006700- 2904000000; City of Rolla OTS Lot 17 Block 7 and Parcel #29-0001-29090-000-00006701-2904000000; City of Rolla OTS Lot 18 Block 7 in the City of Rolla, Rolette County, North Dakota. Job service North Dakota may cause this property to be sold in the manner prescribed by sections 54-01-05.1 and 54-01-05.2. The provisions of section 54-01-05.5 do not apply to the sale and conveyance authorized by this Act. Job service North Dakota shall grant Rolette County a right of first refusal for the purchase of this property for the sum of one dollar within one year of the date of budget section approval. If the study in section 1 of this Act determines the one dollar purchase price to be inadequate based on state or federal law, job service North Dakota shall sell and convey the property to Rolette County at ninety percent of current fair market value within one year of the date of budget section approval. If Rolette County does not exercise its right to purchase the property at ninety percent of current fair market value, job service North Dakota may sell and convey the property to another purchaser for the current fair market value. Net proceeds from the sale must be used as authorized and directed by law. Net proceeds from the sale must be considered received proportional to the funding sources used for the original purchase of the property by Job Service North Dakota. The general fund proportional amount of net proceeds from the sale must be deposited in the job service federal advanced interest repayment fund.

SECTION 4. LEASE OF PROPERTY BY JOB SERVICE NORTH DAKOTA - BISMARCK PROPERTY - JOB SERVICE NORTH DAKOTA RELOCATION - BUDGET SECTION REPORT. The office of management and budget shall determine

the most efficient and cost-effective use of job service North Dakota property Parcel #0485-010-045; Lot N.50' of L 3, ALL L 4-6, ALL L 17-19; Block 10; Addition - TIBESAR'S first in the city of Bismarck, Burleigh County, North Dakota. The office of management and budget shall develop a plan for the most efficient and cost-effective use of the property which may require job service North Dakota to lease all or a portion of the property described in this section to certain state agencies, including the attorney general's office, as allowed by state and federal law. Based on the plan developed by the office of management and budget, and upon the lease of all or a portion of the property described in this section, job service North Dakota may relocate all or a portion of its central office operations to Parcel #0729-001-001; Lot 1; Block 1; Addition - Wisdom Office Park in the city of Bismarck, Burleigh County, North Dakota. The office of management and budget shall report to the budget section regarding its plan before the leasing of the job service North Dakota central office and subsequent relocation of job service North Dakota to the Bismarck regional office.

SECTION 5. LEGISLATIVE INTENT - MINOT AND BISMARCK JOB SERVICE NORTH DAKOTA PROPERTIES. It is the intent of the sixty-fifth legislative assembly that if, as a result of the study provided for in section 1 of this Act, the sale of job service North Dakota property in Minot and its main office in Bismarck is determined feasible, the office of management and budget request authorization and any necessary funding from the sixty-sixth legislative assembly for the conveyance of the property for use by other state agencies.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Disapproved May 1, 2017

Filed May 3, 2017

CHAPTER 444**HOUSE BILL NO. 1015**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an appropriation for defraying the expenses of the state auditor; to provide an appropriation to North Dakota state university; to provide an appropriation to Dickinson state university; to provide an appropriation to the department of human services; to provide for transfers; to identify grant funding; to create and enact a new subsection to the new section to chapter 40-05 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2166, as approved by the sixty-fifth legislative assembly, relating to property tax incentives granted by a city; to amend and reenact sections 5-02-01.1 and 6-09-15.1, subsection 8 of section 15-10-38 as amended by section 2 of Senate Bill No. 2037, as approved by the sixty-fifth legislative assembly, section 43-26.1-05.1 as created by section 2 of Senate Bill No. 2131, as approved by the sixty-fifth legislative assembly, subsection 7 of section 47-02-27.4 as created by section 1 of House Bill No. 1228, as approved by the sixty-fifth legislative assembly, and sections 54-06-04.3 and 57-20-04 of the North Dakota Century Code and subsection 3 of section 8 of House Bill No. 1024, section 21 of Senate Bill No. 2013, and section 23 of Senate Bill No. 2013, as approved by the sixty-fifth legislative assembly, relating to alcohol special event permits, temporary loans to the general fund, the teacher loan forgiveness program, criminal history record checks, exclusions from the statutory rule against perpetuities, state agency publication fees, property tax increase reports, cost reimbursement land sales, an oil and gas valuation study, and effective dates; to repeal section 57-20-05 of the North Dakota Century Code, relating to tax certifications; to suspend section 54-35-23 of the North Dakota Century Code, relating to the tribal and state relations committee; to provide for the administration of the tobacco prevention and control trust fund; to provide exemptions; to provide statements of legislative intent; to provide for legislative management studies; to provide for a legislative management tribal taxation issues committee; to provide for a report to the legislative management; to provide for a budget section report; to provide an effective date; to provide an expiration date; and to declare an emergency.

VETO

May 2, 2017

The Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bellew,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 29 of House Bill 1015, the appropriations bill for the Office of Management and Budget.

Section 29 would eliminate the five-month extension approved for the Board of University and School Lands to begin meeting its obligations under the Administrative Agencies Practices Act. This veto restores the five-month extension.

The extensive effort required to bring the Board of University and School Lands into compliance as an administrative agency justifies extension of the effective date to January 1, 2018.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of House Bill No. 1015, including section 29, see chapter 14.

CHAPTER 445

HOUSE BILL NO. 1019

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department; to amend and reenact sections 55-08-06 and 55-08-07.1 of the North Dakota Century Code, relating to permits for motor vehicles and parks and the recreation concession revolving fund; to provide a grant to the international peace garden; to authorize the transfer of Dakota institute inventory; to provide exemptions; to provide a statement of legislative intent; and to declare an emergency.

VETO

April 25, 2017

The Honorable Lawrence Bellew
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

Re: Item Veto of HB 1019

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 13 and the second sentence in Section 17 of House Bill 1019.

Section 13:

The rules anticipated under Section 13 would create an exception applicable to a limited number of individuals who rent boat slips in a state-owned marina. Additionally, these rules would conflict with existing and long-standing public safety rules governing boat traffic in designated swimming areas.

The parks and recreation department director is authorized to "adopt rules relating to the protection, care, and use of state parks, state campgrounds, state recreational areas, or reserves, and any other real or personal property administered by the director." NDCC 55-08-01.3 (7). In an appropriate exercise of this authority, rules governing state park swimming areas, boat ramps and marinas were first promulgated in 1987 and amended in 1992, 1996, 2006 and 2011. NDAC § 58-02-08-18. These regulations prohibit swimming in state parks except in designated areas and prohibit any boat, canoe or raft from entering a designated swimming area. NDAC § 58-2-08-18 (1) and (2)(c).

We have instructed our new director of parks and recreation to meet with the individual park customers renting marina slips and work toward developing local practices that balance the enjoyment of marina users, their families and guests with the interest of managing liability risk and providing safe recreational areas for all citizens of North Dakota.

Section 17:

The second sentence under Section 17 is vetoed. We have asked the President of Bismarck State College to work in collaboration with the parks and recreation department director, the state historical society and other stakeholders to develop a plan for the optimum use or sale of the Dakota institute property as identified in Section 17.

For the reasons explained above, I have vetoed Section 13 and the second sentence in Section 17 in House Bill 1019.

Sincerely,

Doug Burgum
Governor

Disapproved April 25, 2017

Filed May 11, 2017

NOTE: For the full text of House Bill No. 1019, including sections 13 and 17, see chapter 18.

CHAPTER 446**HOUSE BILL NO. 1020**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide an appropriation to the industrial commission; to amend and reenact section 57-51.1-07, subsection 10 of section 61-02-02, section 61-02-08, subsection 1 of section 61-02-78, section 61-02-79, the new section to chapter 61-03, as created by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, and sections 61-29-06, 61-40-05, and 61-40-11 of the North Dakota Century Code, relating to the oil extraction tax development fund, the definition of water conveyance project, the state water commission chairman and vice chairman, the infrastructure revolving loan fund, a Bank of North Dakota line of credit, economic analyses for certain water projects, management of the Little Missouri scenic river, the authority of the western area water supply authority, and water rates of the western area water supply authority; to provide for budget section approval; to provide for a state engineer study; to provide for an industrial commission study; to provide for a legislative management study; to provide for reports; to provide a statement of legislative intent; to designate funding; to provide for a transfer; to provide exemptions; to provide a contingent effective date; to provide an effective date; to provide an expiration date; and to declare an emergency.

VETO

May 2, 2017

The Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed the last sentence of paragraph 2, Section 5 and all of Section 27 of House Bill 1020, the appropriations bill for the State Water Commission.

The portion of Section 5 that reads: "subject to budget section approval and upon notification to the legislative management's water topics overview committee." is vetoed. This sentence requires the Commission to seek budget section approval before transferring funding between the projects identified under paragraph 1, Section 5.

In *Kelsch v. Jaeger*, the North Dakota Supreme Court concluded the legislature may not delegate legislative powers to a subset of its members. 641 N.W.2d 100 (ND 2002). If enacted, the vetoed portion of Section 5 will interfere with the duties and responsibilities of the State Water Commission as defined under North Dakota law. NDCC § 61-02-04.

Section 27 of House Bill 1020 requires the Commission budget for the 2019-2021 biennium comply with NDCC §§ 54-44.1-16 and include line items for salaries and wages, operating expenses, capital assets, project carryover, new projects "and any additional line items as determined necessary by the commission or office of management and budget." NDCC § 54-44.1-04.

While well intentioned, these requirements will impair the duties and responsibilities of the Commission. Many water projects fit into multiple line item categories. Certain projects proceed slowly, delayed by legal, environmental, cost share and other factors driven by outside parties. The simpler budgeting format previously adopted and approved by the legislature gives the Commission a flexible and efficient model from which to work and should be retained.

As Chair of the State Water Commission, I will ensure our governing board prioritizes public transparency of project expenditures through regular and detailed reporting.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of House Bill No. 1020, including sections 5 and 27, see chapter 19.

CHAPTER 447

HOUSE BILL NO. 1023

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public employees retirement system; to provide for a transfer; to provide for solicitations of bids for the public employee health benefits coverage; to provide for a study; to create and enact sections 54-35-02.9 and 54-35-02.10 and a new subsection to section 54-52-04 of the North Dakota Century Code, relating to the public employee health care coverage committee and the authority of the retirement board; to amend and reenact sections 54-35-02.4 and 54-52.1-08.2 of the North Dakota Century Code, relating to the employee benefits programs committee; and to provide an expiration date.

VETO

May 2, 2017

The Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
North Dakota State Capitol
Bismarck, ND 58505

Dear Speaker Bellew,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed House Bill 1023, but vetoed sections 6, 7, 8, 9, 10, 12 and 13. HB 1023 is the appropriation bill for the North Dakota Public Employees Retirement System (PERS).

Sections 7, 9, 10 and 12 propose creating an entirely new legislative committee, the Public Employee Health Care Coverage Committee. This new committee is intended to study and make recommendations regarding, among other things, the terms of PERS requests for proposals for health insurance coverage. Section 13 refers only to sections being vetoed so it is no longer relevant.

Section 8 changes the scope of the Employee Benefits Programs Committee (EBPC) by eliminating its ability to consider legislative measures and proposals which impact health insurance, effectively splitting the review of employee benefits into two competing committees. Section 8 also eliminates any committee oversight during the 2017-2019 interim for retiree health insurance coverage. Retirement and health insurance benefits must be considered together in a unified, holistic way, along with salary and all other forms of compensation, to optimize value to both recipients and taxpayers as a complete package.

The North Dakota Century Code authorizes PERS to manage the retirement and insurance plans to ensure a comprehensive package of benefits that assists in the recruitment and retention of high-performing employees. Currently, 13 legislative members comprise the EBPC and two legislative members serve on the PERS Board of Trustees, providing significant legislative input to the process.

Section 6 forces early termination of the existing health insurance contract for PERS members on June 30, 2019, and proposes to restrict the next negotiated contract to a two-year period. It is an unproven hypothesis that a two-year, non-renewal contract period will produce lower rates from potential providers.

Under current law, the PERS Board of Trustees, in conjunction with the EBPC, holds the responsibility to assess market alternatives. We share the Legislature's interest in a competitive bid process for PERS health insurance coverage, whether fully or self-insured or a hybrid, that results in lower costs to the state. In addition, multiple future cost saving factors can be considered under our current provider contract.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of House Bill No. 1023, including sections 6, 7, 8, 9, 10, 12 and 13, see chapter 22.

CHAPTER 448

SENATE BILL NO. 2001

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the legislative branch of state government; to provide for applications, transfers, and cancellation of unexpended appropriations; to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the creation of a legislative revenue advisory committee; to provide for legislative management studies; and to declare an emergency.

VETO

May 1, 2017

Honorable Brent Sanford
President of the Senate
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 7 of Senate Bill 2001, the appropriations bill for Legislative Management.

Section 7 of the bill creates a legislative revenue advisory committee, charged with analyzing executive revenue forecasts while assessing "agency revenues, including an assessment of the delivery and cost of services, staffing, and billing processes, to identify improvements to the efficiency and effectiveness of the services that will result in reduced costs for state agencies." This encroaches upon the governor's constitutional duty, outlined in Article V, § 7 of the North Dakota Constitution, entrusting the administration of state business to the state's chief executive. It is the responsibility of the executive branch to analyze and optimize the performance of individual agencies, operating within the budgetary and policy directives of the legislature.

Furthermore, the creation of a parallel legislative revenue advisory committee would result in overlapping and duplicative efforts. The state of North Dakota currently has in place the Advisory Council on Revenue Forecasting, a collection of private and public stakeholders, including legislators, dedicated to ensuring all third-party forecasting done for the state considers on-the-ground realities. While there is certainly room to improve this process, creating another redundant committee does not address the fundamental challenge of revenue forecasting in a commodity-driven economy. If anything, competing groups could result in conflicting revenue forecasts, creating additional challenges for the state's budgeting process.

Currently, the legislature has the final authority to accept, amend, or reject the executive revenue forecast. Looking ahead, collaboration between the Legislative Assembly and Advisory Council on Revenue Forecasting, focused on achieving an

accurate forecast that provides certainty for taxpayers and policymakers, is welcomed and encouraged.

Sincerely,

Doug Burgum
Governor

Disapproved May 1, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2001, including section 7, see chapter 26.

CHAPTER 449

SENATE BILL NO. 2003

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to create and enact two new sections to chapter 15-10 and a new section to chapter 54-12 of the North Dakota Century Code, relating to approval of capital projects requested by institutions under the control of the state board of higher education, the nickel trophy, and tuition and fee waivers for law enforcement officers; and to amend and reenact sections 15-10-48, 15-10-49, 15-18.2-05, 15-18.2-06, 54-10-22.1, and 54-44.1-11 of the North Dakota Century Code, relating to matching grants for institutions under the control of the state board of higher education, state aid to institutions, the minimum amount payable through the higher education funding formula, protecting donor records from audits of university and college foundations, and the cancellation of unexpended appropriations; to repeal chapter 15-10.2 of the North Dakota Century Code, relating to the midwestern higher education compact; to provide for the transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to provide exemptions; to provide for the reallocation of oil and gas tax distributions; to authorize the conveyance of real property owned by the state of North Dakota; to provide for studies; to provide for legislative management reports; to provide legislative intent; to provide an effective date; and to declare an emergency.

VETO

May 2, 2017

The Honorable Brent Sanford
President of the Senate
North Dakota Senate Chambers
North Dakota State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed Senate Bill 2003, but vetoed items in Sections 18, 24, 32, 39 and all of Section 6. SB 2003 is the North Dakota University System appropriations bill.

Section 6.

Article VJII, § 6 of the North Dakota Constitution gives the State Board of Higher Education "full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control." and "control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this state." ND Const. art. VIII, § 6(b)(e). The restrictions in Section 6 intrude upon the operations of the Board and violate the separation of governmental powers established by the North Dakota Constitution.

Section 18.

That portion of paragraph 3, Section 18 that reads "any portion of" is vetoed. The ambiguity of the vetoed language will cause unintended confusion and uncertainty. The remaining language in paragraph 3 achieves the intent of the legislative assembly.

Section 24.

Paragraph 3 (c) of Section 24 is vetoed. This paragraph requiring Dickinson State University to certify that "a North Dakota architect was used to design the presidential library" is hereby vetoed. For example, this condition would preclude the hiring of one of the many North Dakota State University architecture graduates who work at firm:s across the United States.

Section 32.

The second sentence under Section 32 is vetoed. We have instructed the President of Bismarck State College to work collaboratively with the parks and recreation department director, the state historical society and other stakeholders to develop a plan for the optimum use or sale of the Dakota Institute property as identified in Section 32.

Section 39.

The portion of paragraph 39 that reads "and for credit hours completed at the school" is hereby vetoed. Reducing general fund appropriations based upon credit hours is contrary to the legislatively approved higher education funding formula.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2003, including sections 6, 18, 24, 32, and 39 see chapter 28.

CHAPTER 450

SENATE BILL NO. 2013

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to provide an appropriation to the state treasurer; to provide for transfers; to provide for distributions from permanent funds; to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the energy impact fund; to amend and reenact subsection 5 of section 57-51-01 and sections 57-51-15 and 57-51.1-07.6 of the North Dakota Century Code, relating to oil and gas gross production tax definitions and allocations and the political subdivision allocation fund; to repeal section 57-51.1-07.6 of the North Dakota Century Code, relating to the political subdivision allocation fund; to provide exemptions; to provide for reports; to provide statements of legislative intent; to provide for a legislative management study; and to provide an effective date.

VETO

May 2, 2017

The Honorable Brent Sanford
President of the Senate
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 4, Section 20 and a portion of Section 12 of Senate Bill 2013, the appropriations bill for the Department of University and School Lands.

Section 4 was amended in conference committee and approved by the legislature without the scrutiny or transparency of the full legislative public hearing process. This section directs the State Treasurer to transfer \$16,100,000 - \$8.0 million from the strategic investment and improvements fund and \$8.1 million from the state disaster relief fund - to appropriate the sum of \$10,000 to each of approximately 1,610 organized and unorganized townships in non-oil producing counties. At a time when North Dakota is dealing with an unprecedented revenue shortfall, nearly every state agency and department has made substantial cuts in budgets based upon limited reserves and/ or new initiatives that streamline state government. Without demonstrated evidence of differentiated need or want, this exactly equal, across-the-board appropriation is both arbitrary and an inefficient use of our scarce financial resources. Further, given how depleted all of our reserves and ending balances have become, it would be risky to reduce the state disaster relief fund by \$8.1 million.

The portion of Section 12 that reads: "Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section." is vetoed. This sentence requires the Department of University and School Lands to seek budget section approval before

spending funds approved by the full legislative assembly. In *Kelsch v. Jaeger*, the North Dakota Supreme Court stated: "as otherwise provided in the constitution, the legislature may not delegate legislative powers to others, including a subset of its members." 641 N.W.2d 100 (ND 2002). If enacted, the vetoed portion of Section 12 would interfere with proper management of this state agency. The specific language addressed to the Governor and the Commissioner in Section 12 "to achieve efficiencies and budgetary savings . . . through the use of innovative ideas and through alternative solutions relating to information technology" remains. Our office, in conjunction with our state CIO, will monitor this IT project closely in terms of scope, budget spending and outcomes and work closely with the Commissioner of University and School Lands to accomplish the project goals.

Section 20 of Senate Bill 2013 directs the Commissioner of University and School Lands to apply a specific interpretation to the terms "gross production," "market value" and "gross proceeds of sale" as stated in its mineral lease form. The North Dakota Attorney General act as legal counsel to the Commissioner of University and School Lands, including providing legal advice related to its minerals leases and other contracts. The restrictions set forth in Section 20 are an encroachment upon the Attorney General's authority to provide legal advice to this state agency and a violation of the separation of governmental powers established by the North Dakota Constitution.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2013, including sections 12 and 20, see chapter 38.

CHAPTER 451**SENATE BILL NO. 2016**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; to provide a statement of legislative intent; to provide for a legislative management study; to provide for a study by the office of management and budget; to provide an appropriation to the office of management and budget; and to declare an emergency.

VETO

May 2, 2017

Honorable Brent Sanford
President of the Senate
North Dakota Senate
North Dakota State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed SB 2016, the appropriations bill for Job Service North Dakota, but vetoed sections 10 and 12.

The language in section 10 appropriates \$25,000 to the Office of Management and Budget for contracting with an outside entity to conduct a study of the "most cost-effective use" for the Bismarck central office located at 1000 E. Divide Ave. The section limits the analysis of the "cost savings" to general fund dollars and specifically selects only one other state agency with which to compare costs.

It is unnecessary to expend \$25,000 to narrowly study the cost-effective uses of a single state property. Further, this narrowly defined scope of the study will produce an incomplete and misleading result, ignoring federal and other special fund financial impact when determining relocation, rental and remodeling costs.

Section 12 declares section 10 to be an emergency measure. Given the veto of section 10, section 12 is no longer applicable.

Our office will instruct Job Service North Dakota to proceed with a review of its locations immediately. We will seek the input of other state agencies' potential cost savings as part of this review and will consider them as potential tenants for all vacant space.

Sincerely,

Doug Burgum
Governor

Disapproved May 1, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2016, including sections 10 and 12, see chapter 41.

CHAPTER 452**SENATE BILL NO. 2018**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide exemptions; to provide for transfers; to provide for a report; and to declare an emergency.

VETO

May 1, 2017

Honorable Brent Sanford
President of the Senate
State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9, I have signed Senate Bill 2018, the appropriations bill for the commerce department, with an item veto in Section 12.

The portion of Section 12 that reads: "\$300,000 to an organization that provides workplace safety," is vetoed.

This earmark appeared in the final commerce appropriations bill from conference committee. It was added without the benefit of full transparency and scrutiny afforded appropriations that proceed through the public hearing process and full legislative review.

The remaining language in Section 12 gives clear direction to the commerce department to establish guidelines and procedures for awarding grants and vouchers.

Sincerely,

Doug Burgum
Governor

Disapproved May 1, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2018, including section 12, see chapter 43.

INITIATED MEASURES APPROVED

CHAPTER 453

MEDICAL MARIJUANA

This measure would add a new chapter to Title 19 of the North Dakota Century Code creating an Act which provides for the medical use of marijuana for defined medical conditions, such as cancer, AIDS, hepatitis C, ALS, glaucoma, and epilepsy. To participate in the program, the Act would provide for identification cards and certificates of registration which would be issued by the Department of Health for patients, caregivers, and qualified facilities, if all requirements are met. The Act would create provisions for monitoring, inventorying, dispensing, cultivating and growing marijuana to be regulated and enforced by the Department of Health. A qualified patient could be dispensed up to three ounces of usable marijuana, and could grow marijuana if his or her home is located more than forty miles from the nearest registered facility. For violations, the Act would authorize the Department of Health to provide for corrective action, suspension, revocation, appeal, hearings, and referral for criminal prosecution. The Act would require the Department of Health to submit an annual report to the legislature regarding program statistics

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Chapter 19-24 of the North Dakota Century Code is created and enacted as follows:

19-24-01. Title.

This Act may be cited as the "North Dakota Compassionate Care Act".

19-24-02. Definitions.

The following words and terms, when used in these regulations, should have the following meaning, unless the context clearly indicates otherwise:

1. "Act" means the North Dakota Compassionate Care Act.
2. "Adulterated" means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities in response and that contain marijuana for medical use by a registered patient are not considered to be adulterated.
3. "Advisory board" means a nine-member committee established, chaired, and appointed by the governor, in conjunction with the attorney general, to evaluate and make recommendations to the state legislature and the Department.
4. "Applicant" means any person applying to participate in the North Dakota Compassionate Care Act.

5. "Cardholder" means a registered patient of any age or a registered designated caregiver who has been issued and possesses a valid registry identification card.
6. "Compassion center agent" means a principal officer, board member, employee, or agent of a registered compassion center who is twenty-one years of age or older and has not been convicted of an excluded felony offense, and has not been convicted of a drug misdemeanor within five years.
7. "Debilitating medical condition" means one or more of the following:
 - a. Cancer and its treatments;
 - b. Positive status for human immunodeficiency virus (HIV);
 - c. Acquired immune deficiency syndrome (AIDS);
 - d. Decompensated cirrhosis (Hepatitis C);
 - e. Amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease);
 - f. Post-traumatic stress disorder (PTSD);
 - g. Agitation of Alzheimer's disease, dementia, or the treatment of these conditions;
 - h. Crohn's disease or Fibromyalgia;
 - i. Spinal stenosis or chronic back pain including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;
 - j. Glaucoma;
 - k. Epilepsy;
 - l. A chronic or debilitating disease medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects; intractable nausea; seizures; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis;
 - m. Any other medical condition or its treatment added by the North Dakota Department of Health.
8. "Department" means the North Dakota Department of Health.
9. "Designated caregiver" means a person who:
 - a. Is at least twenty-one years of age;
 - b. Has agreed to assist with a patient's medical use of marijuana;
 - c. Has not been convicted of a felony offense; and

- d. Assists no more than five qualifying patients with their medical use of marijuana.
10. "Incidental amount of marijuana" means marijuana seeds, stalks and roots of the plant that are not included when calculating the allowable amounts of marijuana specified in these rules. This includes the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical ointment, food or drink.
 11. "Marijuana", also known as cannabis, is an annual, dioecious, flowering herb that produces a group of chemicals called cannabinoids.
 12. "Marijuana paraphernalia" is limited to equipment, products and materials that are ordinarily used in planting, propagating, cultivating, growing, harvesting, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body. It includes:
 - a. Scales and balances;
 - b. Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - c. Envelopes and other containers used or intended for use in packaging small quantities of marijuana for medical use;
 - d. Containers and other objects used or intended for use in storing medical marijuana; and
 - e. Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana into the human body, including but not limited to:
 - (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - (2) Water pipes;
 - (3) Carburetion tubes and devices;
 - (4) Smoking and carburetion masks;
 - (5) Roach clips, meaning objects used to hold burning marijuana cigarettes that have become too small or too short to be held in the hand;
 - (6) Chamber pipes;
 - (7) Carburetor pipes;
 - (8) Electric pipes;
 - (9) Air-driven pipes;
 - (10) Chillums;

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- (11) Bongs designed for marijuana and not for cocaine; or
- (12) Ice pipes or chillers.
13. "Medical use" means the acquisition, possession, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the registered patient's debilitating medical condition.
 14. "Onsite assessment" means a visit by an employee of the Department for the purpose of ensuring compliance with the requirements of these rules.
 15. "Physician" means a properly licensed physician in the state of North Dakota. If the qualifying patient's debilitating medical condition is Post-Traumatic Stress Disorder, the physician must also be a licensed psychiatrist.
 16. "Post-Traumatic Stress Disorder" means that a patient meets the diagnostic criteria for Post-Traumatic Stress Disorder (PTSD), per DSM-5 or subsequent current edition, including symptoms of intense physical reactions such as tachycardia, shortness of breath, rapid breathing, muscle tension, and sweating.
 17. "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
 18. "Registry identification card" means a document issued by the Department that identifies a person as a registered patient or registered designated caregiver.
 19. "Tincture" means a mixture created from a concentrated extract of marijuana.
 20. "Topical treatment" means a mixture or extract of marijuana made into a balm, lotion, ointment or rubbing alcohol solution that is applied transcutaneously.
 21. "Usable amount of medical marijuana for medical use" means three ounces or less of usable marijuana as defined below.
 22. "Usable marijuana" means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical administration, food, or drink.
 23. "Verification system" means a phone or web-based system established and maintained by the Department that is available to law enforcement personnel and compassion center agents on a twenty-four-hour basis for verification of registry identification cards.
 24. "Written certification" means a document dated and signed by a physician, stating that in the physician's opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification shall be made only in the course of a bona fide physician-patient relationship where the qualifying

patient is under the physician's care for the qualifying patient's primary care or for the qualifying patient's debilitating condition after the physician has completed an assessment of the qualifying patient's medical history and current medical condition. The bona fide physician-patient relationship may not be limited to authorization for the patient to use medical marijuana or consultation for that purpose. The written certification shall specify the qualifying patient's debilitating medical condition.

19-24-03. Qualifying patient identification card application requirements.

1. The Department shall issue a registry identification card to an applicant for the purpose of participating in the medical marijuana program upon the written certification of the applicant's physician, supporting application documents and a non-refundable application fee with a personal check or a cashier's check made out to "North Dakota Department of Health, compassionate care program". The following information shall be provided in the participant enrollment form submitted to the Department in order for a registry identification card to be obtained and processed.
2. An attached original written certification for patient eligibility form shall contain:
 - a. The name, address and telephone number of the applicant's physician;
 - b. The physician's clinical licensure;
 - c. The patient applicant's name and date of birth;
 - d. The medical justification for the physician's certification of the patient's debilitating medical condition;
 - e. The physician's signature and date;
 - f. The name, address and date of birth of the applicant;
 - g. The name, address and date of birth of the applicant's primary caregiver(s), if any;
 - h. A reasonable photographic copy of the applicant's North Dakota driver's license or comparable state of North Dakota or federal issued photo identification card verifying North Dakota residence; state of North Dakota issued identification card must be available for inspection/verification. Should the applicant be a minor, a certificated copy of a birth record will meet the identification requirement;
 - i. The length of time the applicant has been under the care of the physician providing the medical provider certification for patient eligibility;
 - j. The applicant's or guardian's signature and date; and
 - k. A signed consent for release of medical information related to the patient's debilitating medical condition, on a form provided by the North Dakota Department of Health.

19-24-04. Designated caregiver registry identification card application requirements.

1. The Department shall issue a registry identification card to a primary caregiver applicant for the purpose of managing the well-being of one to five qualified patients, including themselves if the caregiver is a qualified patient, in response to the requirements of this rule upon the completion and approval of the primary caregiver application form, available from the medical marijuana program, and a non-refundable application fee, in the form of a personal check or a cashier's check made out to "North Dakota Department of Health, compassionate care program". In order for a registry identification card to be obtained and processed, the following information shall be submitted to the medical marijuana program:
 - a. A certified copy of a birth record verifying that the applicant is at least twenty-one years of age;
 - b. A reasonable photographic copy of the applicant's North Dakota driver's license or comparable state of North Dakota or federal issued photo identification card verifying North Dakota residence; state of North Dakota issued identification card must be available for inspection/verification;
 - c. Written approval by the qualified patient(s) authorizing responsibility for managing the well-being of a qualified patient(s) with respect to the use of marijuana;
 - d. The name(s), address(es), telephone number(s) and date of birth of the qualified patient(s);
 - e. The name, address, and telephone number for each of the qualified patient's physicians;
 - f. The name, address, and telephone number of the applicant; and
 - g. The applicant's signature and date.
2. Designated caregiver application requirements:
 - a. Criminal history screening requirements:
 - (1) All designated caregiver applicants are required to consent to a nationwide and statewide criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the primary caregiver applicant.
 - (2) Individuals convicted of an excluded felony offense are prohibited from serving as a designated caregiver. The applicant and qualified patient shall be notified by registered mail of his or her disqualification from being a designated caregiver.

19-24-05. Registry identification cards.

1. Department inquiry:

- a. The Department may verify information on each application and accompanying documentation by the following methods:
 - (1) Contacting each applicant by telephone, mail, or if proof of identity is uncertain, the Department shall require a face-to-face meeting and the production of additional identification materials;
 - (2) Contacting the North Dakota Board of Medicine to verify that the physician is licensed to practice medicine in North Dakota and is in good standing; and
 - (3) Contacting the physician to obtain further documentation that the applicant's medical diagnosis and medical condition qualify the applicant for enrollment in the compassionate care program.
2. Upon verification of the information contained in an application submitted in response to this subsection, the Department shall approve or deny an application within forty-five calendar days of receipt.
3. Department registry identification card: The Department shall issue a registry identification card within thirty calendar days of approving an application. A registry identification card shall contain a ten-digit alphanumeric identification, maintained by the Department, which identifies the qualified patient or primary caregiver. Unless suspended or revoked, or if the physician stated in the written certification that the qualifying patient would benefit from marijuana until a specified earlier date, a registry identification card shall be valid for a period of one year from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date.
4. Supplemental requirement:
 - a. A registered qualifying patient or registered designated caregiver who possesses a registry identification card shall notify the Department of any of the following within ten calendar days of the change. An extension shall be granted by the medical marijuana program upon the showing of good cause.
 - (1) A change in card holder's name or address;
 - (2) Knowledge of a change that would render the patient no longer qualified to participate in the program, such as a cure of the debilitating condition causing the need for medical marijuana;
 - (3) Knowledge of a change that renders the patient's physician no longer a qualified "physician" as defined in subsection 15 of section 19-24-02 of these regulations; or
 - (4) Knowledge of a change that renders the patient's caregiver no longer eligible as defined in these regulations.
 - b. Before a registered qualifying patient changes his or her designated caregiver, the qualifying patient must notify the Department in writing.
 - c. If a cardholder loses his or her registry identification card, he or she shall notify the Department in writing within ten days of becoming aware the

card has been lost. Upon notification, the Department shall issue a new registry identification card. Unless documentation in the initial application has changed, the qualified patient or designated caregiver shall not be required to submit a new application.

- d. When a cardholder notifies the Department of items listed in subsection 4 but remains eligible, the Department shall issue the cardholder a new registry identification card with a new random ten-digit alphanumeric identification number within ten days of receiving the updated information and the cardholder shall pay a twenty-five dollar fee. If the person notifying the Department is a registered qualifying patient, the Department shall also issue his or her registered designated caregiver, if any, a new registry identification card within ten days of receiving the updated information.
 - e. If a registered qualifying patient ceases to be a registered qualifying patient or changes his or her registered designated caregiver, the Department shall promptly notify the designated caregiver by certified, registered mail. The registered designated caregiver's protections under this chapter as to that qualifying patient shall expire fifteen days after notification by the Department.
 - f. A cardholder who fails to make a notification to the Department that is required by subsection 4 is subject to a civil infraction, punishable by a penalty of no more than one hundred fifty dollars and is also subject to the immediate revocation of the registry identification card and all lawful privileges provided under the Act.
 - g. If the registered qualifying patient's certifying physician notifies the Department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card shall become null and void. However, the registered qualifying patient shall have fifteen days to dispose of the patient's marijuana.
5. Registry identification card application denial: The state health officer or designee shall deny an application if the applicant fails to provide the information required, if the Department determines that the information provided is false, or if the patient does not have a debilitating medical condition eligible for enrollment in the program, as determined by the state health officer. A person whose application has been denied shall not reapply for six months from the date of the denial, unless otherwise authorized by the Department, and is prohibited from all lawful privileges provided by this rule and Act.
 6. The Department shall deny an application or renewal of a qualifying patient's registry identification card if the applicant:
 - a. Did not provide the required information and materials;
 - b. Previously had a registry identification card revoked; or
 - c. Provided false or falsified information.

7. The Department shall deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted if:
 - a. The designated caregiver does not meet the requirements of subsection 2 of section 19-24-04;
 - b. The applicant did not provide the information required;
 - c. The designated caregiver previously had a registry identification card revoked; or
 - d. The applicant or the designated caregiver provides false or falsified information.
8. The department shall notify the qualifying patient who has designated someone to serve as his or her designated caregiver if a registry identification card will not be issued to the designated caregiver.
9. Denial of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the district court.
10. Registry identification card renewal application: Each registry identification card issued by the department is valid in accordance with subsection 2 of section 19-24-03. A qualified patient or primary caregiver shall apply for a registry identification card renewal no less than forty-five calendar days prior to the expiration date of the existing registry identification card in order to prevent interruption of possession of a valid (unexpired) registry identification card.
11. Non-transferable registration of registry identification card: A registry identification card shall not be transferred, by assignment or otherwise, to other persons or locations. Any attempt shall result in the immediate revocation of the registry identification card and all lawful privileges provided by this rule and Act.
12. Automatic expiration of registry identification card by administrative withdrawal: Upon request the qualified patient or designated caregiver shall discontinue the medical marijuana program by an administrative withdrawal. A qualified patient or designated caregiver that intends to seek an administrative withdrawal shall notify the licensing authority in writing no less than thirty calendar days prior to withdrawal.

19-24-06. Addition of debilitating medical conditions.

1. Any citizen may petition the Department to add conditions or treatments to the list of debilitating medical conditions listed in subsection 7 of section 19-24-02.
2. The Department shall not add a condition or treatment to the list of debilitating medical conditions unless it finds that (1) the medical condition or treatment is debilitating and (2) marijuana is more likely than not to have the potential to be beneficial to treat or alleviate the debilitation associated with the medical condition or treatment.

3. Contents of the petition: In connection with any petition to add conditions or treatments to the list of debilitating medical conditions listed in subsection 7 of section 19-24-02, a petitioner shall provide the following information to the Department:
 - a. The extent to which the condition is generally accepted by the medical community and other experts as a valid, existing debilitating medical condition;
 - b. If one or more treatments of the condition, rather than the condition itself, are alleged to be the cause of the patient's suffering, the extent to which the treatments causing suffering are generally accepted by the medical community and other experts as valid treatments for the condition;
 - c. The extent to which the condition or treatments cause severe suffering, such as severe or chronic pain or severe nausea or vomiting, or otherwise severely impair the patient's ability to carry on activities of daily living;
 - d. The ability of conventional medical therapies other than those that cause suffering to alleviate suffering caused by the condition or treatment;
 - e. The extent to which evidence that is generally accepted among the medical community and other experts supports a finding that the use of marijuana alleviates suffering caused by the condition or treatment; and
 - f. Letters of support from physicians or other licensed health care professionals knowledgeable about the condition or treatment.
4. Evaluation of a petition.
 - a. Upon review of materials submitted in response to subsection 3 above, the Department shall make a determination as to whether the petition has merit.
 - b. A petition will be determined to have merit if it contains all of the material required in subsection 3 above and the debilitating condition that is the subject of the petition has not been considered through this process in the prior two years, unless significant, generally accepted, scientific discoveries have been made that are substantially likely to reverse the prior decision.
 - c. A decision that a petition does not have merit will be made in writing, stating the reason(s) it has been determined not to have merit and that it is the final decision, subject to judicial review.
 - d. A final decision on a petition determined to have merit will be made within one hundred eighty days of receipt of the petition in response to the following process.
 - (1) The Department will post the complete petition on the department's website for a sixty-day public comment period.
 - (2) The Department will post notice of a public hearing no fewer than ten days prior to the public hearing.

- (3) The Department will hold a public hearing within the sixty-day public comment period.
 - (4) After the public hearing and closure of the sixty-day public comment period, the Department will review the petition and comments. During this review, the Department may conduct additional research, including consultation with additional experts.
 - (5) The Department of Health will draft a written decision on whether to grant the petition and add the debilitating medical condition for review and ultimate decision by the State Health Officer. This written decision will be detailed enough to provide the specific grounds and references to support the decision. The State Health Officer will issue the final decision on the petition.
 - (6) If the petition to add a debilitating medical condition is granted, draft regulations adding the condition to subsection 7 of section 19-24-02 will be drafted and published in response to the Administrative Agencies Practice Act process.
5. The approval or denial of any petition is a final decision of the Department subject to judicial review. Jurisdiction and venue are vested in the district court.

19-24-07. Registration and operation of compassion centers.

1. Requirements for operation of a compassion center.
 - a. General requirements.
 - (1) No person shall operate a compassion center without a Department issued certificate of registration. The application and renewal requirements for a certificate of registration are in subsections 6 and 10 of section 19-24-07 of these regulations.
 - (2) A compassion center shall be operated on a not-for-profit basis. A compassion center need not be recognized as a tax-exempt organization by the Internal Revenue Service and is not required to incorporate in response to title 8; however, a compassion center shall maintain appropriate documentation of its not-for-profit status, and such documentation shall be available for inspection in response to subdivision g of subsection 2 of section 19-24-07 of these regulations.
 - (3) A compassion center shall not acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply or dispense marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the qualifying patient's registered designated caregiver.
 - (4) Use of pesticides is prohibited:
 - (a) There are no pesticides authorized for use on marijuana; as such, a compassion center shall not apply pesticides in the cultivation of marijuana.
 - (b) Prohibited pesticides include but are not limited to the following:

b. Alarm system:

- (1) A compassion center shall have a fully operational security alarm system at each authorized physical address that will provide suitable protection against theft and diversion. For the purpose of these regulations, a fully operational security alarm system shall include:
 - (a) Immediate automatic or electronic notification to alert local or municipal law enforcement agencies to an unauthorized breach of security at the compassion center or at any other authorized physical address;
 - (b) Immediate automatic or electronic notification to local or municipal public safety personnel of a loss of electrical support backup system; and
 - (c) When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.
- (2) A compassion center shall conduct a maintenance inspection/test of the alarm system for each authorized location at intervals not to exceed thirty days from the previous inspection/test. A compassion center shall promptly make all necessary repairs to ensure the proper operation of the alarm system.
- (3) In the event of a failure of the security system, due to loss of electrical support or mechanical malfunction, that is expected to exceed an eight-hour period, a compassion center shall:
 - (a) Within twenty-four hours of discovery of the event, notify the Department by telephone; and
 - (b) Provide alternative security measures approved by the Department or close the authorized physical address(es) impacted by the failure/malfunction until the security alarm system has been restored to full operation.
- (4) A compassion center shall maintain documentation in an auditable form for a period of at least twenty-four months after the event for:
 - (a) All maintenance inspections/tests conducted in response to subparagraph 2 of subdivision b of subsection 2 of section 19-24-07 of these regulations, and any servicing, modification or upgrade performed on the security alarm system. The record shall include, as a minimum, the date of the action, a summary of the action(s) performed and the name, signature and title of the individual who performed the action(s);
 - (b) Any alarm activation or other event which requires response by public safety personnel; and
 - (c) Any unauthorized breach(es) of security.

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- c. Video surveillance: A compassion center shall provide an appropriate video surveillance system that includes the following areas and access to recorded surveillance.
- (1) Video surveillance should record access areas, customer service areas, growing areas and anywhere the marijuana is handled, to include processing and packaging areas.
 - (2) Video footage will be digitally recorded and held for an appropriate time period consistent with the state Department of Health records retention policy.
- d. Inventory controls.
- (1) Coding and computer interface: A compassion center shall:
 - (a) Employ a bar coding inventory control system to track batch, strain and amounts of marijuana in inventory and amounts sold, to include patient's card registration numbers.
 - (b) Be responsible for developing and hosting a secure computer interface to receive patient card user data from the Department.
 - (2) Storage of marijuana: A compassion center shall ensure that usable marijuana is stored in a locked area with adequate security. For purpose of these regulations "adequate security", at a minimum, should be assessed, established and maintained based on:
 - (a) The quantity of usable marijuana that will be kept on hand at each authorized location;
 - (b) The compassion center's inventory system for tracking and dispensing usable marijuana;
 - (c) The number of principal officers, board members, agents, volunteers or employees who have or could have access to the usable marijuana;
 - (d) The geographic location of the compassion center (i.e.: high-crime or low-crime area);
 - (e) The scope and sustainability of the alarm system; and
 - (f) The root cause analysis of any breach of security and/or inventory discrepancy for usable marijuana at that location.
- e. Comprehensive and monthly inventories:
- (1) A compassion center shall:
 - (a) Notify the Department and local law enforcement within twenty-four hours any time there is a suspected loss of marijuana and shall cooperate fully with any investigation into the suspected loss.
 - (b) Conduct an initial comprehensive inventory of all medical marijuana, including usable marijuana available for dispensing,

mature marijuana plants and unusable marijuana, at each authorized location on the date the compassion center first dispenses medical marijuana.

- (c) Conduct the comprehensive inventory required by subdivision e of subsection 2 of section 19-24-07 of these regulations at intervals not to exceed twenty-four months from the date of the previous comprehensive inventory.
 - (d) Conduct a monthly inventory review of stored, usable marijuana.
- (2) If an inventory conducted in response to subparagraph 1 of subdivision e of subsection 2 of section 19-24-07 of these regulations identifies a discrepancy, the Department and appropriate local law enforcement authorities will be notified of the discrepancy within twenty-four hours of discovery of the event.
- (3) Documentation of all inventories conducted in response to subparagraph 1 of subdivision e of subsection 2 of section 19-24-07 of these regulations shall include, as a minimum, the date of the inventory, a summary of the inventory findings and the name, signature and title of the individual(s) who conducted the inventory.
- f. Maximum amount of compassion center inventory. A registered compassion center:
- (1) Shall possess no more than one thousand marijuana plants irrespective of the stages of growth.
 - (2) Shall possess no more than three thousand five hundred ounces of usable marijuana regardless of formulation.
 - (3) May not purchase usable marijuana or mature marijuana plants from any person other than another registered compassion center.
- g. Inspection. Compassion centers are subject to random inspection by the Department.
- (1) During an inspection, the department may review the compassion center's confidential records, including its financial and dispensing records, which may track transactions according to qualifying patient's registry identification numbers to protect their confidentiality and its security protocols.
 - (2) The Department will review the facility to ensure compliance with subsections 2 and 3 of section 19-24-07 of these regulations.
 - (3) The Department will inspect the facility for the presence of pesticides listed in subparagraph 4 of subdivision a of subsection 1 of section 19-24-07, fungus and molds.
 - (4) The Department will collect samples for random quality sampling by a laboratory selected by the Department.
 - (5) Sample results will be compared to compassion center test results.

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- (6) The compassion center will be invoiced for the cost of random sampling testing.
- h. Dispensing marijuana.
 - (1) Design and security features of medical marijuana containers:
 - (a) Marijuana shall be dispensed in sealed, tamperproof containers clearly identified as having been issued by the compassion center and that meet the requirements in subparagraph 7 of subdivision i of subsection 3 of section 19-24-07 of these regulations.
 - b) Patients and designated caregivers should receive written instruction that the marijuana shall remain in this container when it is not being prepared for ingestion or being ingested.
 - (2) No marijuana shall be dispensed unless or until the patient or caregiver identification card has been verified as valid in the computer system identified in subparagraph 1 of subdivision d of subsection 2 of section 19-24-07 of these regulations.
 - (3) Maximum amount of usable marijuana to be dispensed.
 - (a) A compassion center or principal officer, board member, agent, volunteer or employee of a compassion center:
 - ((1)) Shall not dispense, deliver or otherwise transfer marijuana to a person other than a qualifying patient who has designated the compassion center as a primary caregiver or to such patient's other primary caregiver.
 - ((2)) Shall not dispense more than three ounces of usable marijuana to a qualifying patient directly or through a qualifying patient's caregiver during a fourteen day period.
 - ((3)) Shall not dispense an amount of usable marijuana to a qualifying patient or a qualifying patient's caregiver that the compassion center principal officer, board member, agent, volunteer or employee knows would cause the recipient to possess more marijuana than is permitted under the Act or these regulations.
 - (b) In addition to any other penalties that may be applicable under the Act or these regulations, any person found to have violated subdivision h of subsection 2 of section 19-24-07 of these regulations is not eligible to be an employee, agent, principal officer or board member of any compassion center and such person's registry identification card shall be immediately revoked.
3. Operations manual. A compassion center shall, as part of its initial application, provide to the Department a true, correct and current copy of its operating manual, and shall maintain such operating manual in accordance with the Act and these regulations. Such manual shall include, as a minimum, the following requirements:

- a. Procedures for the oversight of the compassion center including, but not limited to, documentation of the reporting and management structure of the compassion center;
- b. Procedures for safely dispensing medical marijuana to registered qualifying patients or their registered primary caregiver;
- c. Procedures to ensure accurate record keeping, including protocols to ensure that quantities purchased do not suggest re-distribution;
- d. Employee security policies;
- e. Safety and security procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies;
- f. Personal safety and crime prevention techniques;
- g. A job description or employment contract developed for all employees and a volunteer agreement for all volunteers which includes duties, responsibilities, authority, qualification and supervision;
- h. The compassion center's alcohol and drug free work place policy;
- i. A description of the compassion center's outreach activities to registered qualifying patients or their registered primary caregiver, which shall, as a minimum, include:
 - (1) Providing each new registered patient who visits the compassion center with frequently asked questions, designed by the Department, that explain the limitations on the right to use medical marijuana under state law;
 - (2) Ingestion options of usable marijuana provided by the compassion center;
 - (3) Safe smoking techniques shall be provided to registered qualifying patients; and
 - (4) Potential side effects and how this information shall be communicated.
- j. A description of the packaging of the useable marijuana that the compassion center shall be utilizing, as a minimum, include:
 - (1) Employee security policies;
 - (2) Safety and security procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies;
 - (3) Personal safety and crime prevention techniques;
 - (4) A job description or employment contract developed for all employees and a volunteer agreement for all volunteers which includes duties, responsibilities, authority, qualification and supervision;
 - (5) The compassion center's alcohol and drug free work place policy;

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- (6) A description of the compassion center's outreach activities to registered qualifying patients or their registered primary caregiver, which shall as a minimum include:
 - (a) Providing each new registered patient who visits the compassion center with frequently asked questions, designed by the department, that explain the limitations on the right to use medical marijuana under state law;
 - (b) Ingestion options of usable marijuana provided by the compassion center;
 - (c) Safe smoking techniques that shall be provided to registered qualifying patients; and
 - (d) Potential side effects and how this information shall be communicated.
 - (7) A description of the packaging of the useable marijuana that the compassion center shall be utilizing which shall, as a minimum, include:
 - (a) The name of the strain, batch and quantity;
 - (b) The statement "this product is for medical use only, not for resale"; and
 - (c) Details indicating (1) the medical marijuana is free of contaminants and (2) the levels of active ingredients in the product within plus or minus error of five percentage points.
 - (8) A description of the documentation that will accompany a registered compassion center agent when transporting marijuana on behalf of the registered compassion center. The documentation must specify, at least, the amount of marijuana being transported, the date the marijuana is being transported, the registry identification number of the registered compassion center, and a contact number to verify that the marijuana is being transported on behalf of the registered compassion center.
 - (9) Detailed procedures regarding the testing of medical marijuana. As part of its initial application, a compassion center shall provide to the Department detailed procedures regarding the testing of medical marijuana and shall adhere to such procedures in connection with the operation of the compassion center. Such procedures shall include a description of how the marijuana will be tested, including:
 - (a) Whether the testing will be conducted in house or through a contracted facility;
 - (b) How marijuana will be transported securely in connection with such testing;
 - (c) What tests are conducted, including what testing procedures are used;

- (d) How results are tracked and how samples are disposed; and
 - (e) The selection process and the number of samples tested.
4. Required training. Each compassion center shall develop, implement and maintain on the premises an on-site training curriculum, or enter into contractual relationships with outside resources capable of meeting employee, agent and volunteer training needs. Each employee, agent or volunteer, at the time of initial appointment, shall receive, as a minimum, training in the following:
- a. Professional conduct, ethics and state and federal laws regarding patient confidentiality;
 - b. Informational developments in the field of medical use of marijuana;
 - c. The proper use of security measures and controls that have been adopted; and
 - d. Specific procedural instructions for responding to an emergency, including robbery or violent accident.
5. Personnel.
- a. Records: Each compassion center shall maintain:
 - (1) A personnel record for each employee, agent or volunteer for a period of at least six months after termination of the individual's affiliation with the compassion center. The record shall include, as a minimum, the following:
 - (a) An application for employment or to volunteer;
 - (b) A record of any disciplinary action taken;
 - (c) Documentation of all required training. Documentation shall include a signed statement from the individual indicating the date, time and place of said training and topics discussed, including the name and title of presenters;
 - (2) A record of the source of any funds that will be used to open or maintain the compassion center, including the name, address and date of birth of any investor contributing more than five thousand dollars; and
 - (3) A record of any instances in which a business or not-for-profit that any of the prospective board members managed or served on the board of was convicted, fined, censured or had a registration or license suspended or revoked in any administrative or judicial proceeding.
 - b. Registry identification cards and background checks for principal officers, board members, agents, volunteers or employees of a compassion center.
 - (1) In response to the requirements of this rule, and upon the approval of the submitted application, the Department shall issue a registry photo

identification card to each principal officer, board member, agent, volunteer or employee of a compassion center who is associated with the compassion center and meets the requirements under these regulations. In order for a registry identification card to be obtained, the following items shall be submitted to the medical marijuana program.

- (a) A certified copy of a birth record verifying that the applicant is at least twenty-one years of age;
 - (b) A reasonable photographic copy of the applicant's North Dakota driver's license or comparable state of North Dakota or federal issued photo identification card verifying North Dakota residence; identification card must be available for inspection/verification;
 - (c) A written and signed statement from an officer or executive staff member of the compassion center stating that the applicant is associated with the compassion center and in what capacity;
 - (d) The name, address and telephone number of the applicant;
 - (e) The name, address and telephone number of the compassion center with which the agent is associated;
 - (f) The applicant's signature and date;
 - (g) A non-refundable, non-returnable application or renewal fee of one hundred twenty-five dollars in the form of a check made out to "North Dakota Department of Health, compassionate care program".
- (2) Each principal officer, board member, agent, volunteer or employee of a compassion center shall consent to a full nationwide and statewide criminal history screening background check.
- (a) Each applicant shall submit a full state of North Dakota criminal history screening check and a full nationwide criminal history screening check to demonstrate compliance with the eligibility requirements of these regulations.
 - (b) All applicable fees associated with the required criminal history screening background checks shall be paid by the compassion center or the applicant.
 - (c) Individuals convicted of a felony offense, within five years from the date of application, are prohibited from being a compassion center agent.
- (3) The Department may verify information on each application and the accompanying documentation as set forth in subsection 1 of section 19-24-04 of these regulations.
- (4) The Department shall notify the compassion center in writing of the purpose for denying the registry identification card. The state health officer or designee shall deny an application if the applicant fails to provide the information required or if the department determines that

the information provided is false. Denial of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the district court.

- (5) The Department shall issue each principal officer, board member, agent, volunteer or employee of a compassion center a registry identification card within thirty days of receipt of the information required by subparagraphs 1 and 2 of subdivision b of subsection 5 of section 19-24-07. The registry identification card shall contain such information as set forth in subdivision b of subsection 5 of section 19-24-07 of these regulations.
 - (6) Each compassion center shall notify the department in writing within ten days of when a principal officer, board member, agent, volunteer or employee ceases to work at the compassion center. The individual's registry identification card shall be deemed null and void and the individual shall be liable for any other penalties that may apply to the individual's nonmedical use of marijuana.
- c. Expiration date of registry identification cards. The registry identification card of a principal officer, board member, agent, volunteer or employee shall expire one year after its issuance or upon the expiration of the compassion center's registration certificate, whichever comes first.
6. Application for operation of a compassion center. Applicants shall only be accepted during an open application period announced by the department and shall include the following items:
 - a. A non-refundable application fee, made payable to the "North Dakota department of health, compassionate care program", in the amount of five thousand dollars;
 - b. The proposed legal name, articles of incorporation and bylaws of the compassion center;
 - c. The proposed physical address(es) of the compassion center, including any additional address(es) to be used for the secure cultivation of medical marijuana, and with the following details:
 - (1) If precise addresses are known, evidence of compliance to the following rules shall be included:
 - (a) Compliance to the local zoning laws for each physical address to be utilized as a compassion center or for the secure cultivation of medical marijuana;
 - (b) Evidence that all of the physical addresses identified in this section are not located within one thousand feet of a property line of a preexisting public or private school.
 - (2) If precise addresses have not been determined, identification of the general location(s) where it would be sited, and when it would be established;

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- d. A description of the enclosed, locked facility, meeting all requirements of subsection 2 of section 19-24-07 that would be used in the cultivation of marijuana, including steps to ensure that the marijuana production shall not be visible from the street or other public areas;
 - e. Evidence of the compassion center's not-for-profit status, which can be:
 - (1) Documentation of recognition as a tax-exempt organization by the United States Internal Revenue Service; or
 - (2) Other written materials which will allow the department to determine the compassion center's ability to comply with the revenue criteria.
 - f. The name, address, and date of birth of each principal officer and board member of the compassion center;
 - g. A description of proposed security and safety measures, which demonstrate compliance with subsection 2 of section 19-24-07 of these regulations;
 - h. A draft operations manual, which demonstrates compliance with subsection 3 of section 19-24-07 of these regulations;
 - i. An example of the design and security features of medical marijuana containers which demonstrates compliance with subdivision h of subsection 2 of section 19-24-07 of these regulations;
 - j. A list of all persons or business entities having direct or indirect authority over the management or policies of the compassion center;
 - k. A list of all persons or business entities having five percent or more ownership in the compassion center, whether direct or indirect and whether the interest is in profits, land or building, including owners of any business entity which owns all or part of the land or building; and
 - l. The identities of all creditors holding a security interest in the premises, if any.
7. Complete application required. Only applications, which the Department has determined to be complete, shall be eligible for review.
 8. Compassion center application review criteria. The Department shall evaluate applications for a compassion center registration certificate using an impartial and numerically scored competitive bidding process developed by the Department. The Department shall consider the following criteria:
 - a. Documentation of not-for-profit status, consistent with subdivision e of subsection 5 of section 19-24-07 of these regulations;
 - b. The suitability of the proposed location or locations, including but not limited to compliance with any local zoning laws and the geographic convenience to patients from throughout the state of North Dakota to compassion centers if the applicant were approved;

- c. The principal officer and board members' character and relevant experience, including any training or professional licensing related to medicine, pharmaceuticals, natural treatments, botany, food science, food safety or marijuana cultivation and preparation and their experience running business or not-for-profit entities;
 - d. The proposed compassion center's plan for operations and services, including its staffing and training plans, whether it has sufficient capital to operate and its ability to provide an adequate supply and variety of medical marijuana and medical marijuana based products to the registered patients in the state;
 - e. The sufficiency of the applicant's plans for record keeping;
 - f. The sufficiency of the applicant's plans for safety, security and the prevention of diversion, including proposed locations and security devices employed;
 - g. The applicant's plan for making medical marijuana available on an affordable basis to registered qualifying patients enrolled in Medicaid or receiving supplemental security income or social security disability insurance;
 - h. The applicant's plan for safe and accurate packaging and labeling of medical marijuana, which shall include, without limitations, these minimum requirements for packaging and labeling:
 - (1) The name of the strain, batch, and quantity of the medical marijuana;
 - (2) A statement providing that "this product is for medical use only, not for resale";
 - (3) Details indicating the medical marijuana is free of contaminants; and
 - (4) Details indicating the levels of active ingredients in the product.
 - i. The applicant's plan for testing medical marijuana for contaminants and potency of active ingredients; and
 - j. The applicant's ability to grow marijuana without use of pesticides.
9. Issuance of a registration certificate authorizing operation of a compassion center. When an applicant to operate a compassion center is notified that the department has approved its application, it shall submit the following additional items to the department before the registration certificate authorizing operation of a compassion center will be issued.
- a. A certification fee, made payable to the "North Dakota Department of Health, compassion care program", in the amount of twenty-five thousand dollars;
 - b. The legal name, articles of incorporation, and bylaws of the compassion center;

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- c. The physical address of the compassion center and any additional address(es) to be used for the secure cultivation of marijuana, including:
- (1) Evidence demonstrating the following:
 - (a) Compliance with all local zoning laws for each physical address to be utilized as a compassion center or for the secure cultivation of medical marijuana; and
 - (b) That none of the physical addresses identified in subdivision c of subsection 9 of section 19-24-08 of these regulations are located within one thousand feet of the property line of preexisting public or private schools;
 - (2) It is not necessary to resubmit any information provided in response to subparagraph 1 of subdivision c of subsection 6 of section 19-24-07 of these regulations unless there has been a change in that information;
- d. Any updates to previously submitted information including, but not limited to, information about officers, principals, board members, agents, employees, and compliance with subsections 2 and 3 of section 19-24-08 of these regulations;
- e. A current certificate of occupancy, or equivalent document, to demonstrate compliance with the provisions of the state fire code for each physical address to be utilized as a compassion center or for the secure cultivation of medical marijuana.
10. Expiration, termination, or renewal of a registration certificate.
- a. Expiration: A compassion center's registration shall expire two years after its registration certificate is issued. The compassion center may submit a renewal application at any time beginning ninety days prior to the expiration of its registration certificate. Such renewal application must be submitted a minimum of thirty days prior to the expiration of its registration certificate to avoid suspension of the certificate.
 - b. Renewal: The department shall grant a compassion center's renewal application within thirty days of its submission if the following conditions are all satisfied:
 - (1) The compassion center submits materials required under subsection 9 of section 19-24-07 of these regulations, including a twenty-five thousand dollar fee, which shall be refunded if the renewal application is rejected;
 - (2) The department has not ever suspended the compassion center's registration for violations of the Act or these regulations;
 - (3) Inspections conducted pursuant to the Act and these regulations do not raise any serious concerns about the continued operation of the registered compassion center applying for renewal;

- (4) The applicant continues to meet all of the requirements for the operation of a compassion center as set forth in the Act and in these regulations.
 - c. Suspension: The department will suspend a registration certificate authorizing the operation of a compassion center, with or without notice, for any violation of an applicable law or regulation.
 - d. Termination: Upon receipt of written notice that a registration certificate has been terminated, the compassion center has thirty business days to request, in writing, a hearing, for the purpose of review of such action. The hearing process shall follow the procedures in subsection 8 through subsection 17 of section 19-24-09 of these regulations:
 - (1) A written decision will be issued by the department within thirty days of the completion of the hearing. The decision will lift the suspension or terminate a registration certificate. The written decision will state with specificity the reasons for the decision.
 - (2) The termination of a registration certificate is a final decision of the department, subject to judicial review. Jurisdiction and venue are vested in the district court.
11. Non-transferable registration certificate authorizing operation of a compassion center.
 - a. A registration certificate authorizing operation of a compassion center shall not be transferred by assignment or otherwise to other persons or locations. Unless the compassion center applies for and receives an amended registration certificate authorizing operation of a compassion center, the registration certificate shall be void and returned to the department when one or more of the following situations occur:
 - (1) A change in ownership of the compassion center;
 - (2) A change in one or more authorized physical locations; or
 - (3) The compassion center discontinues its operation.
 - b. A compassion center shall provide the department with a written notice of any change described in subsection 11 of section 19-24-07 of these regulations at least sixty days prior to the proposed effective date of the change. The department may waive all or part of the required advance notice to address emergent or emergency situations.
 - c. Transactions which usually do not constitute a change of ownership include the following:
 - (1) Changes in the membership of the board of directors or board of trustees; or
 - (2) Two or more legal entities merge and the entity to whom the registration certificate authorizing operation of a compassion center was issued survives.

- d. Management agreements are generally not considered a change in ownership if the entity to whom the registration certificate authorizing operation of a compassion center was issued continues to retain ultimate authority for the operation of the compassion center; however, if the ultimate authority is surrendered and transferred from the entity to whom the registration certificate authorizing operation of a compassion center was issued to a new manager, then a change of ownership has occurred.

19-24-08. Cultivation and growing of marijuana.

1. If the qualifying patient's home is located more than forty miles from the nearest compassionate care center, the qualified patient or designated caregiver may cultivate up to eight marijuana plants in an enclosed, locked facility.
2. The enclosed, locked facility shall not be within one thousand feet of a public school.
3. The qualified patient or designated caregiver must give local law enforcement officials a notice of intent to grow marijuana in an enclosed, locked facility. The notice must include qualified patient name, a copy of the written certification from the physician, and the address of the location where the marijuana will be cultivated.

19-24-09. On-site visits/interviews.

1. The Department or its designee may perform on-site interviews of a qualified patient or primary caregiver to determine eligibility for the program. The Department may enter the premises of a qualified patient or primary caregiver during business hours for purposes of interviewing a program applicant. Twenty-four hours' notice will be provided to the qualified patient or primary caregiver prior to an on-site interview.
2. All qualified patients or primary caregivers shall provide the Department or the department's designee immediate access to any material and information necessary for determining eligibility with these requirements.
3. Failure by the qualified patient or primary caregiver to provide the Department access to the premises or information may result in action up to and including the revocation of the qualified patient or primary caregiver registry identification card and referral to state law enforcement.
4. Any failure to adhere to these rules, documented by the Department during an interview, may result in sanction(s), including suspension, revocation, non-renewal or denial of licensure and referral to state or local law enforcement.
5. The Department shall refer credible criminal complaints against a qualified patient or primary caregiver to the appropriate North Dakota state or appropriate local authorities.
6. Corrective action:
 - a. If violations of these requirements are cited as a result of monitoring, the qualified patient or primary caregiver shall be provided with an official written report of the findings following the monitoring visit.

- b. Unless otherwise specified by the Department, the qualified patient or primary caregiver shall correct the violation within five calendar days of receipt of the official written report citing the violation(s).
 - c. The violation shall not be deemed corrected until the Department verifies in writing after receiving notice of the corrective action that the corrective action is satisfactory.
 - d. If the violation has not been corrected, the department may issue a notice of contemplated action to revoke the qualified patient's or designated caregiver's registry identification card.
 - e. Suspension of registry identification card without prior hearing: If immediate action is required to protect the health and safety of the general public, the department may suspend the qualified patient or designated caregiver registry identification card without notice.
 - (1) A qualified patient or primary caregiver whose registry identification card has been summarily suspended is entitled to a record review not later than thirty calendar days after the registry identification card was summarily suspended.
 - (2) The record review requested subsequent to a summary suspension shall be conducted by the department.
 - (3) The Department shall conduct the record review on the summary suspension by reviewing all documents submitted by both card holder and the department.
 - (4) The sole issue at a record review on a summary suspension is whether the card holder's registry identification card shall remain suspended pending a final adjudicatory hearing and ruling.
 - (5) A card holder given notice of summary suspension by the Department may submit a written request for a record review. To be effective, the written request shall:
 - (a) Be made within thirty calendar days, as determined by the postmark, from the date of the notice issued by the Department;
 - (b) Be properly addressed to the medical marijuana program;
 - (c) State the applicant's name, address and telephone number(s);
 - (d) Provide a brief narrative rebutting the circumstances of the suspension; and
 - (e) Additional documentation must be included with the request for a record review.
7. Summary suspension. Revocation and appeal process:
- a. Participation in the medical marijuana program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

- (1) Criminal prosecution or civil penalties for activities not authorized in this rule and Act;
- (2) Liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; or
- (3) Criminal prosecution or civil penalty for possession, distribution or transfers of marijuana or use of marijuana;
 - (a) In a school bus or public vehicle;
 - (b) On school grounds or property;
 - (c) In the workplace of the qualified patient's or primary caregiver's employment;
 - (d) At a public park, recreation center, youth center or other public place;
 - (e) To a person not approved by the department pursuant to this rule;
 - (f) Outside North Dakota or attempts to obtain or transport marijuana from outside North Dakota; or
 - (g) That exceeds the allotted amount of usable medical use marijuana.
- b. Revocation of registry identification card: Violation of any provision of this rule may result in either the summary suspension of the qualified patient's or primary caregiver's registry identification card, or a notice of contemplated action to suspend or revoke the qualified patient's or primary caregiver's registry identification card, and all lawful privileges under the Act.
- c. Grounds for revocation or suspension of registry identification card, denial of renewal application for registry identification card. A registry identification card may be revoked or suspended, and a renewal application may be denied for:
 - (1) Failure to comply with any provisions of these requirements;
 - (2) Failure to allow a monitoring visit by authorized representatives of the department;
 - (3) The discovery of repeated violations of these requirements during monitoring visits.
8. Request for hearing: A qualified patient or primary caregiver whose registry identification card has been summarily suspended, or who has received a notice of contemplated action to suspend or revoke, may request a hearing, in addition to a request for a record review, for the purpose of review of such action. The request for hearing shall be filed within thirty calendar days of the date the action is taken or the notice of contemplated action is received. The request shall include the following:
 - a. A statement of the facts relevant to the review of the action;

- b. A statement of the provision of the Act and the rules promulgated under the Act that are relevant to the review of the action;
 - c. A statement of the arguments that the qualified patient/primary caregiver considers relevant to the review of the action; and
 - d. Any other evidence considered relevant.
9. Hearing process:
- a. All formal adjudicatory hearings held in response to these regulations shall be conducted by a hearing officer duly appointed by the State Health Officer.
 - b. Except for telephonic hearings, hearings shall be conducted in Bismarck at the state Department of Health or, upon written request by an aggrieved person, in the place or area affected.
 - c. All hearings held pursuant to this section shall be open to the public.
 - d. The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter. The decision as to the type of recording shall be at the discretion of the department.
 - e. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.
 - f. The Department shall schedule and hold the hearing as soon as practicable, however, in any event no later than sixty calendar days from the date the department receives the request for hearing. The hearing officer shall extend the sixty-day time period upon motion for good cause shown or the parties shall extend the sixty day time period by mutual agreement. The Department shall issue notice of hearing, not less than twenty days prior to the hearing, which shall include:
 - (1) A statement of the time, place and nature of the hearing;
 - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) A short and plain statement of the matters of fact and law asserted;
 - (4) Notice to any other parties to give prompt notice of issues controverted in fact or law; and
 - (5) All necessary telephone numbers if a telephonic hearing shall be conducted.
10. All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.
11. Record of proceeding: The record of the proceeding shall include the following:
- a. All pleadings, motions and intermediate rulings;

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- b. Evidence received or considered;
 - c. A statement of matters officially noticed;
 - d. Questions and offers of proof, objections and rulings thereon;
 - e. Proposed findings and conclusions; and
 - f. Any action recommended by the hearing officer.
12. A party may request a transcription of the proceedings. The party requesting the transcript shall bear the cost of transcription.
 13. Procedures and evidence:
 - a. Any party shall be represented by a person licensed to practice law in North Dakota or an individual may represent him or herself.
 - b. The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence shall be admitted and such evidence shall be sufficient in itself to support a finding if the evidence is reliable, regardless of the existence of any statutory or common law rule that shall make admission of such evidence improper in a civil action. Irrelevant, immaterial or unduly repetitious evidence shall be excluded at a party's request or on the hearing officer's own initiative.
 - c. Documentary evidence shall be received in evidence in the form of true copies of the original.
 - d. Documentary and other physical evidence shall be authenticated or identified by any reasonable means that shows that the matter in question is what the proponent claims it to be.
 - e. The experience, technical competence and specialized knowledge of the hearing officer, the Department or the department's staff shall be used in the evaluation of evidence.
 - f. Evidence on which the hearing officer shall base his or her decision is limited to the following:
 - (1) All evidence, including any records, investigation reports and documents in the department's possession of which the department desires to avail itself as evidence in making a decision that is offered and made a part of the record of the proceeding; and
 - (2) Testimony and exhibits introduced by the parties.
 - g. The record shall include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.
 - h. A party to a hearing shall submit to the hearing officer, and to all other parties to the hearing, all documents to be introduced at the hearing no later than five business days from the scheduled hearing date to ensure the hearing officer and other parties receive the documents prior to the hearing.

- i. The Department may choose to:
 - (1) Issue subpoenas for witnesses and other sources of evidence, either on the agency's initiative or at the request of any party; and
 - (2) Administer oaths to witnesses; limit unduly repetitive proof, rebuttal and cross-examination.
14. Conduct of proceeding: Unless the hearing officer reasonably determines a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule. The following procedures shall apply:
 - a. The Department shall present an opening statement on the merits and the cardholder shall make a statement of the defense or reserve the statement until presentation of that party's case;
 - b. After the opening statements, if made, the department shall present its case in chief in support of the department's petition;
 - c. Upon the conclusion of the department's case, the cardholder shall present its case in defense;
 - d. Upon conclusion of the cardholder's case, the Department shall present rebuttal evidence;
 - e. After presentation of the evidence by the parties, the Department shall present a closing argument; the cardholder then shall present its closing argument and the department shall present a rebuttal argument; and
 - f. Thereafter, the matter shall be submitted for recommendation by the hearing officer.
15. Continuances: The hearing officer shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least ten calendar days before the hearing date.
16. Telephonic hearings:
 - a. Any party requesting a telephonic hearing shall do so within ten business days of the date of the notice. Immediately after the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.
 - b. Any party that has agreed to a telephonic hearing, but subsequently requests an in-person hearing shall do so in writing to the hearing officer no later than ten calendar days before the scheduled date of the hearing. The decision to grant or deny the request for an in-person hearing shall be at the discretion of the hearing officer for good cause shown. The hearing officer's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. Should the hearing officer grant the request, the hearing shall be rescheduled to a time convenient for all parties. Should the hearing officer deny the request, the telephonic hearing shall proceed as scheduled.

- c. The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all shall hear the proceedings and documents shall be transmitted between witnesses and the hearing officer.
 - d. The cardholder shall initiate the telephone call. The department is responsible for ensuring the telephone number to the department's location for the telephonic hearing is accurate and the department representative is available at said telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the petitioner to a default judgment.
 - e. The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing officer.
17. Recommended action and final decision:
- a. At the request of the hearing officer or upon motion by either party granted by the hearing officer, and before the hearing officer recommends action by the secretary, the parties shall submit briefs including findings of fact and conclusions of law for consideration by the hearing officer. The hearing officer holds the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing officer. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing officer request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing officer has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than forty-five calendar days from the date of continuance.
 - b. No more than thirty calendar days after completion of the hearing, the hearing officer shall prepare a written decision containing recommendation of action to be taken by the secretary. The recommendation shall propose to sustain, modify or reverse the initial decision of the department or the department's agent.
 - c. The secretary shall accept, reject or modify the hearing officer's recommendation no later than ten calendar days after receipt of the hearing officer's recommendation. The final decision or order shall be issued in writing and shall include:
 - (1) A brief summary of the evidence;
 - (2) A statement of findings of fact based upon the evidence;
 - (3) Conclusions and the reasons thereof, on all material issues of fact, law or discretion involved;
 - (4) Any other conclusions required by law of the department; and

(5) A concise statement of the department's specific determination or action taken to sustain, modify or reverse the initial decision of the department or the department's agent.

- d. Service shall be made by registered or certified mail.
- e. The final decision or order shall be public information and shall become a part of the record.

19-24-10. Severability.

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full effect.

19-24-11. Privacy of the compassionate care Act records and paperwork.

The Department cannot release any records, paperwork, or details of any applicant, card holder, compassionate care agent, or registered designated caregiver without their written permission except as necessary for authorized employees of the department to perform official duties of the department. In the event written permission is given to the department, the department is only allowed to give out the information requested for a thirty-day period.

1. Annual report. The Department shall submit to the legislature an annual report that does not disclose any identifying information about cardholders, compassionate care centers or physicians but contains at least all of the following information:
 - a. The number of registry identification card applications and renewals.
 - b. The number of qualifying patients and designated caregivers approved in each county.
 - c. The nature of the debilitating medical condition(s) of the qualifying patients.
 - d. The number of registry identification cards revoked.
 - e. The number of physicians providing written certifications for qualifying patients.
 - f. The number of registered nonprofit, compassionate care centers.

19-24-12. Facility restrictions.

1. Any nursing care institution, hospice, assisted living center, assisted living facility, assisted living home, residential care institution, adult day health care facility or adult foster care home licensed in the state of North Dakota may adopt reasonable restrictions on the use of marijuana by their residents or persons receiving inpatient services, including:
 - a. That the facility will not store or maintain the patient's supply of marijuana.

- b. That the facility, caregivers or hospice agencies serving the facility's residents are not responsible for providing the marijuana for qualifying patients.
 - c. That marijuana can be consumed by a method other than smoking.
 - d. That marijuana is consumed only in a place specified by the facility.
2. Nothing in the section requires a facility listed in subsection 1 to adopt restrictions on the medical use of marijuana.
 3. A facility listed in subsection 1 may not unreasonably limit a registered, qualifying patient's access to or use of marijuana authorized under this chapter unless failing to do so would cause the facility to lose a monetary or licensing-related benefit under federal law or regulations.

19-24-13. Compassionate care fund - Private donations.

1. The compassionate care fund is established consisting of fees collected, civil penalties imposed and private donations received under this chapter. The Department shall administer the fund. Monies in the fund are continuously appropriated.
2. The State Health Officer may accept and spend private grants, gifts, donations, contributions and devises to assist in carrying out the provisions of this chapter, including but not limited to providing funds for the individuals who are financially distressed for purchase of medical cannabis products.
3. Monies in the compassionate care fund do not revert to the state of North Dakota's general fund at the end of the fiscal year.

Approved November 8, 2016

216,042 to 122,615

NOTE: This was measure No. 5 on the general election ballot.

INITIATED MEASURES DISAPPROVED

CHAPTER 454

VETERANS' TOBACCO TAX TRUST FUND

This initiated measure would provide for a new veterans' tobacco tax trust fund in North Dakota Century Code Chapter 37-14 to fund certain veterans' programs. This fund, among others, would be supported by an increase in the excise tax on cigarettes from \$0.44 to \$2.20 per package of twenty cigarettes, as well as an increase in the excise tax on cigars from 28% to 56% of the wholesale purchase price at which the product is purchased by distributors. The excise tax on all other tobacco products is increased a commensurate amount. The measure also would create an inventory tax on cigarettes and tobacco products. All revenues received by the tax commissioner under this measure would be allocated among the State's general fund, the veterans' tobacco trust fund, and the community health trust fund. The measure would create and amend provisions in Chapter 57-36, including new definitions for inhalation devices, liquid nicotine, and tobacco products; prohibiting retailers from being distributors and requiring distributors to keep additional records; setting requirements for registration of liquid nicotine retailers; and regulating the alteration of liquid nicotine. Finally, the measure would repeal two provisions of current law related to an excise tax on cigarettes and the exemption for taxes on cigarettes and tobacco products given to occupants of the State's veterans' home and the state hospital.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-14 of the North Dakota Century Code is created and enacted as follows:

Veterans' tobacco tax trust fund.

The veterans' tobacco tax trust fund is a permanent trust fund of the state of North Dakota and consists of moneys transferred or credited to the fund from the taxation of cigarettes and tobacco products, and all income earned from investment of the moneys in the fund. Investment of the fund is the responsibility of the state investment board. All moneys in this fund shall be utilized for programs of benefit and service to veterans or their dependents, and shall be appropriated to the administrative committee on veterans' affairs for expenditure on programs consistent with a strategic plan as developed and approved by the administrative committee on veteran's affairs.

SECTION 2. AMENDMENT. Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

57-36-01. Definitions.

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

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
2. "Cigar" means any roll of tobacco wrapped in tobacco.

3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed tobacco and encased in any material except tobacco. "Cigarette" also means any product of a cigarette-making machine.
4. "Cigarette-making machine" means a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.
5. "Consumer" means any person who has title to or possession of cigarettes, cigars, ~~pipe tobacco~~, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes any person other than a distributor who is licensed and engaged in the business of selling cigarettes, cigarette papers, cigars, ~~pipe tobacco~~, or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, ~~pipe tobacco~~, or other tobacco products, including any person engaged in combining, altering, or mixing a solution containing liquid nicotine with any other substance, or importing into this state cigarettes, cigarette papers, cigars, ~~pipe tobacco~~, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
8. "Inhalation device" means any product that, through electronic, mechanical, chemical, or other means, can be used to deliver aerosolized or vaporized nicotine or any substance derived from tobacco through inhalation. Inhalation device includes any component, part, or accessory of such device, whether or not sold separately. Inhalation device does not include cigarettes as defined in this chapter or in subsection 4 of section 51-25-01, and does not include any drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act [52 Sta. 1040; 21 U.S.C. 301 et seq].
9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
10. "Licensed distributor" means a distributor licensed under the provisions of this chapter.
11. "~~Other tobacco products" means snuff and chewing tobacco~~ "Liquid nicotine" means any liquid, gel, solution, or other non-solid or non-gas that contains nicotine made or derived in any way from tobacco. All liquid nicotine is presumed to be derived from tobacco unless the person demonstrates, at the person's sole expense and to the satisfaction of the tax commissioner, that the nicotine was made or derived from sources other than tobacco.
12. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
13. "Pipe tobacco" means any processed tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

14. "Sale" or "sell" applies to gifts, exchanges, and barter.
15. "Snuff" "Smokeless tobacco" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth, including snuff and snus.
16. "Storage" means any keeping or retention of cigarettes, ~~cigars, pipe tobacco,~~ or other tobacco products for use or consumption in this state.
17. "Tobacco product" means any product containing, made, or derived from tobacco, including any product containing nicotine derived from tobacco, that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. Tobacco product includes cigars, pipe tobacco, chewing tobacco, liquid nicotine, smokeless tobacco, other kinds and forms of tobacco. Tobacco product does not include cigarettes as defined in this chapter, and does not include any drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act [52 Sta. 1040; 21 U.S.C. 301 et seq.]. Tobacco product also does not include a packaged product sold as a singular unit, including a packaged product that contains an inhalation device, in which no tobacco or nicotine derived from tobacco is present. For the purposes of this chapter, if a packaged product contains any tobacco or nicotine derived from tobacco, the entire packaged product shall be a tobacco product.
18. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, ~~cigars, pipe tobacco,~~ or other tobacco products.

SECTION 3. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed.

Each person engaged in the business of selling cigarettes, cigarette papers, ~~snuff, cigars,~~ or tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, ~~snuff, cigars,~~ or tobacco products. ~~No retailer will. A licensed dealer may not be granted a distributor's license. A licensed distributor may not apply for or be granted a distributor's dealer's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application unless the applicant has held a valid distributor license for one year.~~ The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 4. Section 57-36-02.1 of the North Dakota Century Code is created and enacted as follows:

57-36-02.1. Registration of liquid nicotine dealers.

Each dealer engaged in the business of selling liquid nicotine shall register with the office of the attorney general. The registration form prescribed by the attorney general must include the name and address of the registrant, the address and place of business, the type of business, and other information as required by the proper administration of this chapter. A separate registration is required for each retail outlet when a person owns or controls more than one place of business dealing in liquid nicotine.

SECTION 5. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license -- Penalty.

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, ~~snuff, cigars,~~ or tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 6. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

57-36-05. Unlawful to sell without license. – Unlawful to alter liquid nicotine without distributor license.

1. A dealer or distributor may not sell cigarettes, cigarette papers, ~~snuff, cigars,~~ or tobacco products in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, ~~snuff, cigars,~~ or tobacco products without such license.
2. A licensed dealer may not mix, alter, or combine a solution containing liquid nicotine with any other substance in this state.
3. A person may not mix, alter, or combine a solution containing liquid nicotine with any other substance in this state for the purpose of distributing and selling the solution to a licensed distributor or licensed dealer unless a distributor license has been issued to that person as prescribed by this chapter.

SECTION 7. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made -- Penalty.

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, ~~cigars, pipe tobacco,~~ or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, ~~pipe tobacco~~, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, ~~pipe tobacco~~, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, ~~pipe tobacco~~, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products other than solutions containing liquid nicotine, the records must also include the net weight in ounces, as listed by the manufacturer. For sales of solutions containing liquid nicotine, the records must include all measurements of weight or volume listed by the manufacturer or distributor.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, ~~pipe tobacco~~, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products other than solutions containing liquid nicotine, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. For sales of solutions containing liquid nicotine, each licensed distributor shall report to the tax commissioner all measurements of weight or volume listed by the manufacturer or distributor, and for solutions containing liquid nicotine that the licensed distributor mixed with any other solution in this state, the volume in milliliters distributed or sold by the distributor. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 8. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.1. Warehouse -- Record of deliveries and shipments.

Records of all deliveries of shipments of cigarettes and ~~snuff tobacco products~~ from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, ~~snuff, cigars,~~ or other tobacco products delivered, the volume of all solutions containing liquid nicotine distributed, and such other information as the tax commissioner may require. These

records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, or other tobacco products.

SECTION 9. AMENDMENT. Section 57-36-25 of the North Dakota Century Code is amended and reenacted as follows:

57-36-25. Cigars and pipe Tobacco products - Excise tax on wholesale purchase price - Other tobacco products — Excise tax on weight - Penalty - Reports - Collection - Allocation of revenue.

- 1.1. There is hereby levied and assessed upon all ~~cigars and pipe~~ tobacco products sold in this state an excise tax at the rate of ~~twenty-eight~~ fifty-six percent of the wholesale purchase price at which such ~~cigars and pipe~~ tobacco products are purchased by distributors. For the purposes of this section, the term "wholesale purchase price" shall mean the established price for which a manufacturer sells ~~cigars or pipe~~ tobacco products to a distributor exclusive of any discount or other reduction.
2. There is levied and assessed upon all other tobacco products sold in this state an excise tax at the following rates:
 - a. Upon each can or package of snuff, sixty cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.
 - b. On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.

~~For purposes of this subsection, the tax on other tobacco products is computed based on the net weight as listed by the manufacturer.~~

- 3.2. The proceeds of the taxes imposed under this section, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the fifteenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the fifteenth day of the month following the month for which the returns are filed.
- 4.3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
- 5.4. All moneys received by the tax commissioner under the provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund for transfer and allocation pursuant to section 57-36-31.

SECTION 10. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. ~~Cigars, pipe tobacco, and other tobacco~~ Tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is levied and assessed, upon all ~~cigars and pipe tobacco~~ products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of ~~twenty-eight percent of the wholesale purchase price and, upon all other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state.~~ For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells ~~cigars or pipe tobacco~~ products to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.
2. If ~~cigars, pipe tobacco, or other tobacco~~ products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is ~~twenty~~ fifty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on ~~cigars, pipe tobacco, or other tobacco~~ products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.
3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury ~~to the credit of the general fund for transfer and allocation pursuant to section 57-36-31.~~

SECTION 11. AMENDMENT. Section 57-36-27 of the North Dakota Century Code is amended and reenacted as follows:

57-36-27. Consumer's use tax - Cigarettes - Reports - Remittances.

1. A tax is hereby imposed upon the use or storage by consumers of cigarettes in this state, and upon such consumers, at the following rates:
 - a. On cigarettes weighing not more than three pounds [1360.78 grams] per thousand, five mills on each such cigarette.
 - b. On cigarettes weighing more than three pounds [1360.78 grams] per thousand, five and one-half mills on each such cigarette.
2. This tax does not apply if the tax imposed by section 57-36-0632 has been paid.
3. On or before the tenth day of each calendar quarter, every consumer who during the preceding calendar quarter, has acquired title or possession of cigarettes for use or storage in this state, upon which cigarettes the tax imposed by section 57-36-0632 has not been paid, shall file a return with the tax commissioner showing the quantity of cigarettes so acquired. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the tax commissioner has the authority to make an assessment of tax against the consumer according to the commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties, and collections of taxes are applicable to consumers under this section in like manner as though set out in full herein.

SECTION 12. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax -- Cigars, pipe tobacco, and other Tobacco products -- Reports -- Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by sections 57-36-25 or 57-36-26 has been paid, and it does not apply to cigars, pipe tobacco, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26

has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of ~~other~~ tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. For solutions containing liquid nicotine, the return must include all measurements of weight in ounces and liquids in milliliters, as listed by the manufacturer or distributor. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.

4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

SECTION 13. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by tax commissioner.
2. Whenever a distributor destroys cigarettes, ~~cigars, pipe tobacco,~~ or ~~other~~ tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 14. AMENDMENT. Section 57-36-31 of the North Dakota Century Code is amended and reenacted as follows:

57-36-31. Transfer and allocation of revenues - Appropriation.

1. All moneys received by the tax commissioner under the provisions of this chapter must be transmitted to the state treasurer at the end of each month and deposited in the state treasury ~~to the credit of the general fund, except as hereinafter provided~~ in this section.
2. All moneys received from the levy and assessment of ~~one and one-half~~ two mills on each of the classes of cigarettes provided in this chapter are appropriated and must be distributed on or before the thirtieth day of June and the thirty-first day of December of each year on a per capita basis to the incorporated cities for such purposes as are now or may be hereafter authorized by law, the allocation to be based upon the population of each incorporated city according to the last official federal census, or the census taken in accordance with the provisions of chapter 40-02 in the case of a city

incorporated subsequent to the last federal census; and warrants must be drawn payable to the treasurers of such cities.

3. All moneys received by the tax commissioner under this chapter from the levy and assessment of twenty mills on each of the classes of cigarettes provided in this chapter and fifty percent of all moneys received from the levy and assessment of excise taxes on tobacco products shall be credited to the state's general fund.
4. All moneys received by the tax commissioner under this chapter from forty-four mills of the tax on each of the classes of cigarettes and twenty-five percent of all moneys received from the levy and assessment of excise taxes on tobacco products shall be credited to the veterans' tobacco tax trust fund. Funds appropriated by this section may supplement but may not supplant any funding that, in the absence of this chapter, would be or has been provided by the legislature for the same or similar purposes.
5. All moneys received by the tax commissioner under this chapter from forty-four mills of the tax on each of the classes of cigarettes and twenty-five percent of all moneys received from the levy and assessment of excise taxes on tobacco products shall be credited to the community health trust fund and appropriated as specified in this subsection. Funds appropriated by this section may supplement but may not supplant any funding that, in the absence of this chapter, would be or has been provided by the legislature for the same or similar purposes.
 - a. Seventy percent of the revenues deposited in the community health trust fund pursuant to this section are appropriated consistent with a comprehensive plan for the support of behavioral health services as developed and approved by the North Dakota behavioral health planning council, and;
 - b. Twenty percent of the revenues deposited in the community health trust fund pursuant to this section are appropriated and must be distributed on or before the thirtieth day of June and the thirty-first day of December of year, ten percent of the distribution in equal amounts to each county and ninety percent on a per capita basis to the counties, the allocation to each to be based upon the population of each county according to the most recent official federal census. The county treasurer shall distribute all moneys received under this section to the public health unit serving that county for the delivery of the essential local health unit services established by the state health council, and;
 - c. Ten percent of the revenues deposited in the community health trust fund pursuant to this section are appropriated to the department of health for the support of chronic disease detection, prevention, treatment, and control.
6. No moneys allocated under this chapter shall supplant any funding that, in the absence of this chapter, would be or has been deposited in the Tobacco Prevention and Control Trust Fund as set forth in section 54-27-25, for the executive committee's implementation of the purposes in chapter 23-42.

SECTION 15. AMENDMENT. Section 57-36-32 of the North Dakota Century Code is amended and reenacted as follows:

57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited.

There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of seventeen one hundred ten mills on each cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, corporation, or limited liability company shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying the tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury for transfer and allocation pursuant to section 57-36-31.

SECTION 16. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter.

Except as otherwise provided in this chapter:

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1.

SECTION 17. Section 57-36-34 of the North Dakota Century Code is created and enacted as follows:

57-36-34. Inventory Tax on Cigarettes or Tobacco Products.

For any cigarettes or tobacco products on which a tax pursuant to this chapter has already been paid that is in the possession or control of a distributor, wholesaler, retailer or any other person in the business of distributing or selling cigarettes or tobacco products on the effective date of an increase in the tax rate on that cigarette or tobacco product, the distributor, wholesaler, retailer or other person shall, to fully comply with the tax rate increase, make a tax payment equal to the new tax rate on the cigarettes or tobacco products minus the amount of tax already paid on that cigarette or tobacco product. These payments shall be made to the tax commissioner within thirty days of the effective day of the tax rate increase and shall be submitted along with a report, in such form as the tax commissioner may prescribe, describing all the subject cigarettes or tobacco products in the possession or control of the distributor, wholesaler, retailer or other person on the effective date of the tax rate increase and showing the related tax payments due. Any tax payments pursuant to this paragraph made later than thirty days after the effective date of the tax rate increase shall include interest at the rate of two percent per month or fraction of a

month from the date the tax payment was due until the date that the tax payment is received by the tax commissioner. Any tax payments pursuant to this section received by the tax commissioner within twenty days of the tax rate increase may be reduced by one percent.

SECTION 18. REPEALS. Sections 57-36-06 and 57-36-24 of the North Dakota Century Code are repealed.

Disapproved November 8, 2016

130,508 to 209,832

NOTE: This was measure No. 4 on the general election ballot.

REFERRED MEASURES APPROVED

CHAPTER 455

CORPORATE OWNERSHIP OF DAIRY OR SWINE FACILITIES

This referendum measure would reject Senate Bill No. 2351 as passed by the 2015 Legislative Assembly, would allow the ownership or leasing of up to 640 acres of land for the operation of a dairy farm or swine production facility by a domestic corporation or limited liability company. Senate Bill 2351 would also require the agriculture commissioner to develop reporting and monitoring rules to ensure compliance.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

That the following proposed amendment to section 5 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 general election to be held in 2016, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. Each ~~person~~individual elected or appointed to the legislative assembly must be, on the day of the election or appointment, a qualified elector in the district from which the member was ~~chosen~~selected and must have been a resident of the state for one year immediately prior to that election. An individual may not serve in the legislative assembly unless the individual lives in the district from which selected.

Approved June 14, 2016

99,976 to 32,045

NOTE: This was measure No. 1 on the primary election ballot.

CONSTITUTIONAL AMENDMENTS APPROVED

CHAPTER 456

SENATE CONCURRENT RESOLUTION NO. 4010

(Senators Wardner, Schneider)
(Representatives Carlson, Onstad)

RESIDENCY REQUIREMENTS OF LEGISLATIVE ASSEMBLY MEMBERS

A concurrent resolution to amend and reenact section 5 of article IV of the Constitution of North Dakota, relating to residency requirements of members of the legislative assembly.

STATEMENT OF INTENT

This measure would require a member of the legislative assembly to be a resident of the district from which selected and would prohibit an individual from being seated in the legislative assembly if the individual does not live in the district from which selected.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 5 of article IV 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 2016, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. Each ~~person~~individual elected or appointed to the legislative assembly must be, on the day of the election or appointment, a qualified elector in the district from which the member was ~~chosen~~selected and must have been a resident of the state for one year immediately prior to that election. An individual may not serve in the legislative assembly unless the individual lives in the district from which selected.

Approved November 8, 2016 282,231 to 45,542

NOTE: This was measure No. 1 on the general election ballot.

CHAPTER 457

SENATE CONCURRENT RESOLUTION NO. 4003

(Legislative Management)
(Government Finance Committee)

OIL EXTRACTION TAX DISTRIBUTION

A concurrent resolution to amend and reenact section 24 of article X of the Constitution of North Dakota, relating to the foundation aid stabilization fund.

STATEMENT OF INTENT

This measure expands the educational purposes for which the foundation aid stabilization fund may be used.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 24 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 November 2016, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 24 of article X of the Constitution of North Dakota is amended and reenacted as follows:

Section 24.

1. ~~TwentyTen~~ percent of the revenue from oil extraction taxes from taxable oil produced in this state must be ~~allocated as follows:~~
1. ~~Fifty percent must be deposited in the common schools trust fund.~~
2. FiftyTen percent of the revenue from oil extraction taxes from taxable oil produced in this state must be deposited in the foundation aid stabilization fund in the state treasury, the interest ~~income~~ of which must be transferred to the state general fund on July first of each year. ~~The~~
 - a. Except as otherwise provided, the principal of the foundation aid stabilization fund may be expended only upon order of the governor, who may direct such a transfer only to offset foundation-aid reductions that in state aid to school districts, which were made by executive action, pursuant to law, due to a revenue shortage.
 - b. Whenever the principal balance of the foundation aid stabilization fund exceeds fifteen percent of the general fund appropriation for state aid to school districts, for the most recently completed biennium, as determined by the office of management and budget, the legislative assembly may appropriate or transfer any excess principal balance. Such amount may be used for education-related purposes, as provided by law.

Approved November 8, 2016

209,651 to 116,418

NOTE: This was measure No. 2 on the general election ballot.

CHAPTER 458

CRIME VICTIM RIGHTS

This initiated constitutional measure would add a new section to Article I of the North Dakota Constitution which would provide certain rights to victims of crime in this state, including the right to be treated with respect, to be free from harassment, and to be protected from the accused. The measure would provide for the right to prevent the disclosure of confidential information about the victim; to refuse or limit questioning of the victim; to notice of, and presence at, court proceedings; and to notice of release or escape of the accused. The measure would provide for the right to be heard in court proceedings, to provide information about the impact of the offender's conduct, and to receive reports relevant to these rights. The measure would provide for the right to restitution from an offender for losses suffered as a result of criminal conduct; to be informed of the outcome of the case and of the detention or other disposition of the offender; and to be informed of, and participate in, post-judgment processes.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new Section to Article I of the North Dakota Constitution is created and enacted as follows:

To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and delinquent children, all victims shall be entitled to the following rights, beginning at the time of their victimization:

The right to be treated with fairness and respect for the victim's dignity.

The right to be free from intimidation, harassment and abuse.

The right to be reasonably protected from the accused and any person acting on behalf of the accused.

The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions.

The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.

The right to privacy, which includes the right to refuse an interview, deposition or other discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of defendant, and to set reasonable conditions on the conduct of any such interaction to which the victim consents. Nothing in this section shall abrogate a defendant's Sixth Amendment rights under the United States Constitution nor diminish the State's disclosure obligations to a defendant.

The right to reasonable, accurate and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication and disposition, and any proceeding during which a right of the victim is implicated.

The right to be promptly notified of any release or escape of the accused.

The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding during which a right of the victim is implicated.

The right, upon request, to confer with the attorney for the government.

The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence or disposition investigation or compiling any pre-sentence investigation report or recommendation regarding, and to have any such information considered in any sentencing or disposition recommendations.

The right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any pre-sentence report or plan of disposition when available to defendant or delinquent child.

The right, upon request, to the prompt return of the victim's property when no longer needed as evidence in the case.

The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government.

The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings.

The right, upon request, to be informed of the conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody or commitment.

The right, upon request, to be informed in a timely manner of all post-judgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole authority shall extend the right to be heard to any person harmed by the offender.

The right, upon request, to be informed in a timely manner of any pardon, commutation, reprieve or expungement procedures, to provide information to the Governor, the court, any pardon board and other authority in these procedures, and to have that information considered before a decision is

made, and to be notified of such decision in advance of any release of the offender.

The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in what is referred to as a Marsy's Card.

The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government upon request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, ensuring that no right is deprived without due process of law, and affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right shall be clearly stated on the record.

The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. All provisions of this section apply throughout criminal and juvenile justice processes and are self-enabling. This section does not create any cause of action for damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.

As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. If a victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, may also exercise these rights. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim.

Approved November 8, 2016 207,248 to 126,884

NOTE: This was measure No. 3 on the general election ballot.

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 459

HOUSE CONCURRENT RESOLUTION NO. 3001

(Representatives Beadle, Mock)

A concurrent resolution declaring March 3, 2017, as "National Speech and Debate Education Day".

WHEREAS, National Speech and Debate Education Day was established by the National Speech & Debate Association in conjunction with national and local partners, and is being celebrated on March 3, 2017; and

WHEREAS, the event serves to promote better instruction in speech and debate across all grade levels and highlight the pivotal roles speech and debate play in personal advocacy, social movements, and public policymaking; and

WHEREAS, speech and debate education helps students develop important skills in communication, critical thinking, creativity, and collaboration through the practice of public speaking in which participants learn not only to express complex ideas effectively, but also to listen, concur, question, or dissent with reason and compassion; and

WHEREAS, across the country countless educators devote their time in-school, after-school, and on weekends to supporting students in speech and debate practices and competitions, and their hard work and dedication has lasting and positive impacts on their students; and

WHEREAS, the skills learned through speech and debate serve students well throughout their lives, and this occasion presents a welcome opportunity to recognize speech and debate instruction as an essential component of a well-rounded curriculum;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly declares March 3, 2017, as "National Speech and Debate Education Day"; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the North Dakota Council of Educational Leaders.

Filed March 13, 2017

CHAPTER 460**HOUSE CONCURRENT RESOLUTION NO. 3002**

(Representatives Heinert, Boehning, D. Johnson, M. Ruby, Zubke)
(Senators Bekkedahl, Grabinger, Unruh)

A concurrent resolution requesting the Legislative Management to consider studying the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from the Department of Corrections and Rehabilitation to the Attorney General.

WHEREAS, the Department of Corrections and Rehabilitation supervises city, county, and regional correctional facilities; and

WHEREAS, city, county, and regional correctional facilities are operated and managed by local authorities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Management consider studying the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from the Department of Corrections and Rehabilitation to the Attorney General; 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-sixth Legislative Assembly.

Filed March 21, 2017

CHAPTER 461

HOUSE CONCURRENT RESOLUTION NO. 3003

(Representatives Klemin, Heinert, K. Koppelman)
(Senators Hogue, D. Larson)

A concurrent resolution requesting the Legislative Management to consider studying the impact of Marsy's Law on the statutorily provided rights of crime victims and those alleged to have committed crimes, and the criminal procedures relating to the rights of victims and criminal defendants.

WHEREAS, at the general election in 2016, the voters of the state approved a constitutional amendment, referred to as Marsy's Law, which provides a variety of rights guaranteed to crime victims; and

WHEREAS, the North Dakota Century Code provides rights to victims of crimes and to individuals who are alleged to have committed crimes, and it is necessary to ensure enforcement policies and criminal procedures are uniform across the state; and

WHEREAS, it is the responsibility of the Legislative Assembly to review existing laws to ensure those laws address the problems the laws are intended to rectify;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Management consider studying the impact of Marsy's Law on the statutorily provided rights of crime victims and the rights of those alleged to have committed crimes, and the criminal procedures relating to the rights of victims and criminal defendants; 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-sixth Legislative Assembly.

Filed March 14, 2017

CHAPTER 462

HOUSE CONCURRENT RESOLUTION NO. 3006

(Representatives Kasper, Rick C. Becker, Carlson, Headland, K. Koppelman, Louser,
D. Ruby)
(Senators Armstrong, Casper, Hogue, Poolman, Wardner)

A concurrent resolution calling for a convention for the purpose of amending the United States Constitution to impose fiscal restraints on the federal government and limit the power and jurisdiction of the federal government.

WHEREAS, the founders of the United States Constitution empowered state legislators to be guardians of liberty against excessive use of power by the federal government; and

WHEREAS, the federal government has created a crushing national debt through improper and imprudent spending; and

WHEREAS, the federal government has ceased to operate under a proper interpretation of the United States Constitution; and

WHEREAS, the federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, most of which are unfunded to a great extent; and

WHEREAS, it is the solemn duty of the states to protect the liberty of our people, particularly for the generations to come, by proposing amendments to the United States Constitution through a convention of the states under Article V for the purpose of restraining these and related abuses of power;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly urges the Congress, under the provisions of Article V of the United States Constitution, to call a convention of the states limited to proposing amendments to the United States Constitution which impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress; and

BE IT FURTHER RESOLVED, that this application constitutes a continuing application in accordance with Article V of the United States Constitution until the legislatures of at least two-thirds of the several states have made applications on the same subject; and

BE IT FURTHER RESOLVED, that the Legislative Assembly adopts this application expressly subject to the following reservations, understandings, and declarations:

1. An application to the Congress of the United States to call an amendment convention of the states pursuant to Article V of the United States Constitution confers no power to Congress other than the power to call such a convention. The power of Congress to exercise this ministerial duty consists solely of the authority to name a reasonable time and place for the initial meeting of a convention;
2. Congress shall perform its ministerial duty of calling an amendment convention of the states only upon the receipt of applications for an amendment convention for the substantially same purpose as this application from two-thirds of the legislatures of the several states;
3. Congress does not have the power or authority to determine any rules for the governing of a convention for proposing amendments called pursuant to Article V of the United States Constitution. Congress does not have the power to set the number of delegates to be sent by any state to such a convention, nor does it have the power to name delegates to such a convention. The power to name delegates remains exclusively within the authority of the legislatures of the several states;
4. By definition, an amendment convention of the states means that states shall vote on the basis of one state, one vote;
5. A convention for proposing amendments convened pursuant to this application must be limited to consideration of the topics specified herein and no other. This application is made with the express understanding that an amendment that in any way seeks to amend, modify, or repeal any provision of the Bill of Rights is not authorized for consideration at any stage. This application is void ab initio if ever used at any stage to consider any change to any provision of the Bill of Rights;
6. Pursuant to Article V of the United States Constitution, Congress may determine whether proposed amendments must be ratified by the legislatures of the several states or by special state ratification conventions. The Legislative Assembly recommends Congress select ratification by the legislatures of the several states; and
7. The Legislative Assembly may provide further instructions to its delegates and may recall its delegates at any time for a breach of a duty or a violation of the instructions provided; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President and Secretary of the Senate and the Speaker and Clerk of the House of Representatives of the Congress, each member of the United States Congressional Delegation from North Dakota, and the presiding officers of each house of the legislatures of the several states, requesting their cooperation.

Filed March 29, 2017

CHAPTER 463**HOUSE CONCURRENT RESOLUTION NO. 3009**

(Representatives Brandenburg, Headland, Kempenich, Magrum, Weisz, Zubke)
(Senators Erbele, Klein, Schaible, Sorvaag, Wanzek)

A concurrent resolution urging Congress to amend the 2014 farm bill to allow counties to use raw yield data from insurance companies to supplement the national agriculture statistics survey to calculate payments under the Agriculture Risk Coverage program when an insufficient number of surveys are returned to accurately calculate payments.

WHEREAS, the Agriculture Risk Coverage program was authorized by the 2014 federal farm bill; and

WHEREAS, the Agriculture Loss Coverage-County program provides revenue loss coverage at the county level when the actual crop revenue of a covered commodity is less than the program guarantee for the covered commodity; and

WHEREAS, to qualify to receive payments, commodity producers in a county must complete and return a national agriculture statistics survey relating to yields; and

WHEREAS, multiple counties and producers in North Dakota have not qualified and will not receive payments under the program because there has been an insufficient number of yield data surveys returned from the county to accurately calculate payments;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly urges Congress to amend the 2014 farm bill to allow counties to use raw yield data from insurance companies to supplement the national agriculture statistics survey to calculate payments under the Agriculture Risk Coverage program when an insufficient number of surveys are returned to accurately calculate payments; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, the Majority and Minority Leaders of the United States Senate and the United States House of Representatives, and the Secretary of the United States Department of Agriculture.

Filed March 22, 2017

CHAPTER 464

HOUSE CONCURRENT RESOLUTION NO. 3010

(Representatives D. Anderson, Dockter, C. Johnson, Owens)
(Senators Kreun, Vedaa)

A concurrent resolution recognizing the efforts undertaken and the continued need for the State of North Dakota and the entire United States to undertake responsible measures to harden our commercial electrical grid against multiple serious threats.

WHEREAS, continued reliable operation of our national electrical grid is an absolutely vital core requirement for modern society to continue to function; and

WHEREAS, the strategic vulnerability of our electrical grid to multiple threats has been documented by many leaders and technical experts; and

WHEREAS, Congressional Electromagnetic Pulse Commission experts have predicted worst-case impacts from these threats could take down much, if not all, of our national electrical grid for an extended period, and testified a high-end electromagnetic pulse event could result in the eventual death of up to ninety percent of America's population; and

WHEREAS, public and private electric utilities have taken many steps in response to these threats, including the implementation of Critical Infrastructure Protection standards developed by the North American Electric Reliability Corporation, which includes the strategic installation of appropriate hardware, such as electrical shunts and surge suppressors;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly recognizes the efforts undertaken to protect our state and national power grid from these serious threats, and urges state and federal regulatory agencies to continue awareness of this issue and carefully coordinated efforts involving private and public sectors to address the threat of electromagnetic pulse; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Chairman of the Federal Energy Regulatory Commission, the Secretary of the Department of Homeland Security, the Secretary of Energy, and each member of the North Dakota Congressional Delegation.

Filed March 16, 2017

CHAPTER 465

HOUSE CONCURRENT RESOLUTION NO. 3011

(Representatives Damschen, Bellew, Carlson, Monson, Roers Jones, Weisz)
(Senators Erbele, D. Larson, Luick, Myrdal, Schaible, Wardner)

A concurrent resolution extending appreciation to the President of the United States for expediting the approval of the easement required for the completion of the Dakota Access Pipeline, and requesting the federal government reimburse the state of North Dakota for all expenses incurred as a result of the Dakota Access Pipeline protests and permitting delays.

WHEREAS, the granting of the easement to complete the Dakota Access Pipeline has eased costs associated with pipeline protests; and

WHEREAS, the costs associated with the protests have resulted in over \$32 million in loans to the Adjutant General; and

WHEREAS, the 1,172-mile Dakota Access Pipeline is projected to transport 470,000 barrels of oil per day, which is equivalent to more than 658 rail cars or 2,350 semi-truck loads per day; and

WHEREAS, transportation of oil by pipeline is a safer method of transportation than by rail or semi-truck; and

WHEREAS, the vast majority of the pipeline is situated on privately held lands with only 3 percent of the pipeline route requiring federal approval and only 1 percent of the pipeline route impacting United States waterways; and

WHEREAS, the pipeline is constructed with extra-thick steel and double walls to prevent corrosion and mitigate any possible leaks; and

WHEREAS, the pipeline is equipped with shut-off valves on both sides of the river and will be monitored at all times by operations maintenance staff; and

WHEREAS, the pipeline runs along the same route as existing infrastructure, including the Northern Border Gas Pipeline and an overhead utility line; and

WHEREAS, the the pipeline crosses various other rivers and streams, including the Missouri River 14 miles upstream of the water intake for Williston, North Dakota, the Big Sioux River near Sioux Falls, South Dakota, the Des Moines River in Iowa, and the Mississippi River; and

WHEREAS, all rules and regulatory processes for permitting the pipeline were followed;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifty Legislative Assembly extends appreciation to the President of the United States for expediting the approval of the easement required for the completion of the Dakota Access Pipeline, and requests the federal government reimburse the state of North Dakota for all expenses incurred as a result of the Dakota Access Pipeline protests and permitting delays; 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 Army Corps of Engineers, the Assistant Secretary of the Army for Civil Works, each member of the North Dakota Congressional Delegation, and the Majority and Minority Leaders of the United States House of Representatives and the United States Senate.

Filed April 7, 2017

CHAPTER 466**HOUSE CONCURRENT RESOLUTION NO. 3014**

(Representatives Keiser, Porter)
(Senators Cook, Sorvaag, Wardner)

A concurrent resolution requesting the Legislative Management to consider studying the various legal notice and publishing requirements of all state agencies and political subdivisions, the related costs required in state and political subdivision budgets, and potential notification alternatives.

WHEREAS, the North Dakota Century Code requires numerous state agencies and political subdivisions to publish various legal notices; and

WHEREAS, state agencies spend an estimated \$3,700,000 during each biennium in publishing legal notices; and

WHEREAS, state leaders are constantly pursuing solutions to be more fiscally responsible; and

WHEREAS, many forms of alternative and mainstream media are now available to provide legal notices;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Management consider studying the various legal notice and publishing requirements of all state agencies and political subdivisions, the related costs required in state and political subdivision budgets, and potential notification alternatives; 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-sixth Legislative Assembly.

Filed April 3, 2017

CHAPTER 467

HOUSE CONCURRENT RESOLUTION NO. 3015

(Representatives Kempenich, Brandenburg, Devlin)

A concurrent resolution declaring the fourth Saturday in July of each year as "Day of the American Cowboy".

WHEREAS, thirteen years ago, the *American Cowboy Magazine* promoted the National Day of the American Cowboy as a catalyst to encourage local western cultural events and activities in celebration of our proud western heritage; and

WHEREAS, this initiative has been gathering momentum and is an established success; and

WHEREAS, this summer a number of barbeques, ranch rodeos, cowboy poetry festivals, bull riding, and other western heritage events have been scheduled from venues as diverse as Okeechobee, Florida, and Norco, California; and

WHEREAS, the states in the high plains have not yet achieved the degree of participation in Day of the American Cowboy as Texas and other low plains states have demonstrated;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly declares the fourth Saturday in July of each year as "Day of the American Cowboy";

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the *American Cowboy Magazine*.

Filed March 17, 2017

CHAPTER 468**HOUSE CONCURRENT RESOLUTION NO. 3016**

(Representative Headland)

A concurrent resolution requesting the Legislative Management to consider studying the desirability of moving city and other local elections from the primary election in June in even-numbered years to the general election in November in even-numbered years.

WHEREAS, city and other local elections are held on the second Tuesday in June in each even-numbered year; and

WHEREAS, primary elections for United States senators, member of the House of Representatives, members of the legislative assembly, elected state officials, judges of the supreme court and district courts, county officers, and county commissioners are held on the second Tuesday in June of every general election year; and

WHEREAS, general elections are held on the first Tuesday after the first Monday in November of each even-numbered year; and

WHEREAS, holding city and other local elections concurrently with primary elections may cause confusion; and

WHEREAS, newly elected city commission and city council members take office on the fourth Tuesday in June; and

WHEREAS, because city governing bodies must prepare preliminary budgets by September tenth, newly elected city commissioners and city council members have approximately two months after taking office to gain the knowledge necessary to prepare preliminary budgets;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Management consider studying the desirability of moving city and other local elections from the primary election in June in even-numbered years to the general election in November in even-numbered years; 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-sixth Legislative Assembly.

Filed April 7, 2017

CHAPTER 469**HOUSE CONCURRENT RESOLUTION NO. 3019**

(Representatives Jones, Brandenburg, Kasper, Maragos, Monson, Steiner, Zubke)
(Senators Bowman, Kannianen, Rust)

A concurrent resolution requesting the United States Army Corps of Engineers divest land not needed for the management of the Garrison project area in North Dakota.

WHEREAS, the United States Army Corps of Engineers manages land purchased for the operation of the Garrison project area in North Dakota; and

WHEREAS, Congress and the federal courts have established in federal law that the Pick-Sloan project areas must be managed for flood control, river navigation, hydroelectric power, irrigation, water quality and supply, recreation, and fish and wildlife; and

WHEREAS, the purchasing criteria used by the United States Army Corps of Engineers to acquire land for the Garrison project area required land be purchased based on a rectangular grid line above the reservoir's high water mark, and the rectangular grid size used for purchase criteria could be smaller in some cases and not interfere with recreation and wildlife uses; and

WHEREAS, the United States Army Corps of Engineers should develop a divestment process for the lands by working in cooperation with the North Dakota Board of University and School Lands and the North Dakota Congressional Delegation, if the Garrison project can be managed without tracts of land between the reservoir high water mark and that tract's rectangular grid take line;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly requests that any land subject to divestment under an agreement between the United States Army Corps of Engineers and the North Dakota Board of University and School Lands include a purchase right for prior owners who own the land the parcels were detached from, their heirs who own the land the parcels were detached from, or successors who own the land the parcels were detached from; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Under Secretary of Public Works for the United States Army Corps of Engineers and each member of the North Dakota Congressional Delegation.

Filed April 17, 2017

CHAPTER 470

HOUSE CONCURRENT RESOLUTION NO. 3021

(Representative D. Johnson)
(Senator Kreun)

A concurrent resolution urging Congress and the President of the United States to fulfill the federal government's promises to North Dakota, allow the utilization of the Garrison Diversion Unit facilities, including the McClusky Canal and the Snake Creek pumping plant, as a water supply for eastern and central North Dakota, irrigation, and for all other authorized project purposes, not deauthorize or repurpose any part of the Garrison Diversion Unit, and to allow the continuation of the Garrison Diversion project canal system to aid the delivery of water to the Red River Valley.

WHEREAS, the federal government invested millions of dollars designing and constructing the Garrison Diversion Unit; and

WHEREAS, the federal government promised North Dakota one million acres of irrigation and a water supply for eastern and central North Dakota, among other things, in exchange for hundreds of thousands of acres of prime river bottom land to build the Garrison Dam, a promise that has never been fulfilled; and

WHEREAS, the operation of the Garrison Diversion Unit does not violate the Boundary Waters Treaty of 1909 with Canada; and

WHEREAS, the Dakota Water Resources Act of 2000 recognizes the dire need for a reliable, high-quality water supply in eastern North Dakota; and

WHEREAS, after studies and reports authorized under the Dakota Water Resources Act of 2000, the United States Bureau of Reclamation's needs and options report clearly concluded there is a significant need for a municipal, rural, and industrial water supply in eastern North Dakota; and

WHEREAS, the environmental impact statement, developed jointly by the Bureau of Reclamation and North Dakota, represented by the Garrison Diversion Conservancy District, further identifies the Missouri River as the most reliable water source and utilizing the Garrison Diversion Unit principal supply works as the most cost-effective way to supply the needed water to eastern North Dakota; and

WHEREAS, a report by the United States Department of the Interior's Office of Inspector General recommended the Garrison Diversion Unit be deauthorized by the federal government; and

WHEREAS, the Bureau of Reclamation on more than one occasion supported title transfer of the Garrison Diversion Unit to North Dakota, but with restrictions that made the title transfer unfeasible; and

WHEREAS, representatives of the Bureau of Reclamation conducted limited sensing sessions in North Dakota, and were told by citizens of North Dakota to utilize the Garrison Diversion Unit project and not repurpose it; and

WHEREAS, the United States Bureau of Reclamation and the Garrison Diversion Conservancy District completed an environmental impact statement evaluating eight alternatives for supplying the Red River Valley with water in 2005, supplemented the statement in January 2007, and completed a final environmental impact statement in December 2007; and

WHEREAS, the federal government and the state both selected the Garrison Diversion Unit import to the Sheyenne River as the best alternative for the project, taking into consideration water permitting, environmental impacts, and technical, hydrologic, and design evaluations; and

WHEREAS, the Bureau of Reclamation sent a comprehensive report of the Garrison Diversion Unit to Congress in 2008;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly urges Congress and the President of the United States to fulfill the federal government's promises to North Dakota, allow the utilization of the Garrison Diversion Unit facilities, including the McClusky Canal and the Snake Creek pumping plant, as a water supply for eastern and central North Dakota, irrigation, and for all other authorized project purposes, not deauthorize or repurpose any part of the Garrison Diversion Unit, and to allow the continuation of the Garrison Diversion project canal system to aid the delivery of water to the Red River Valley; and

BE IT FURTHER RESOLVED, that the Garrison Diversion Conservancy District and State Water Commission be requested to study the desirability, feasibility, and affordability of taking title to the Garrison Diversion Unit and utilizing it for authorized project purposes; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States and each member of the North Dakota Congressional Delegation.

Filed April 7, 2017

CHAPTER 471**HOUSE CONCURRENT RESOLUTION NO. 3023**

(Representatives Carlson, Hogan, Mock, Porter, Vigesaa)

(Senators Heckaman, Wardner)

(Approved by the Delayed Bills Committee)

A concurrent resolution declaring February 9, 2017, as "Giving Hearts Day".

WHEREAS, Giving Hearts Day was started in 2008 by the Dakota Medical Foundation and Impact Foundation as the first one-day "virtual" fundraising event of its kind in the region; and

WHEREAS, in 2014 the Alex Stern Family Foundation joined Dakota Medical Foundation and Impact Foundation as a cohost; and

WHEREAS, this twenty-four hour fundraising event in North Dakota and western Minnesota is dedicated to inspiring donations for charities at givingheartstoday.org; and

WHEREAS, the Dakota Medical Foundation, Impact Foundation, and the Alex Stern Family Foundation jointly support givingheartstoday.org to create a powerful regional, user-friendly website for donors to find and connect with charities, and for nonprofits to receive donations and recruit volunteers; and

WHEREAS, last year, \$8.3 million was raised from 14,538 donors, directly benefiting 326 charities, and since its start, over \$30.9 million has been raised; and

WHEREAS, Giving Hearts Day 2017 includes over 360 nonprofit organizations and spans the entire state of North Dakota and western Minnesota; and

WHEREAS, up to \$50,000 in new donor incentives will be awarded by Dakota Medical Foundation to randomly selected participating charities throughout the day including two \$10,000 "boost" awards to charities announced at 6:00 p.m. and 10:00 p.m. on February 9, 2017; and

WHEREAS, North Dakota citizens are encouraged to support Giving Hearts Day and to invite a friend to match their commitment to make financial donations to local charities that improve quality of life across the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly declares February 9, 2017, as "Giving Hearts Day"; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Dakota Medical Foundation, the Impact Foundation, and the Alex Stern Family Foundation.

Filed February 13, 2017

CHAPTER 472

HOUSE CONCURRENT RESOLUTION NO. 3024

(Representatives Hogan, D. Johnson, Maragos, J. Nelson)

(Senators Bekkedahl, Mathern)

(Approved by the Delayed Bills Committee)

A concurrent resolution declaring June 27, 2017, and each June 27 thereafter, as "Posttraumatic Stress Injury Awareness Day" and the month of June 2017, and each June thereafter, as "Posttraumatic Stress Injury Awareness Month".

WHEREAS, all citizens of the United States possess the basic human right to the preservation of personal dignity; and

WHEREAS, all citizens of the United States deserve the investment of every possible resource to ensure lasting physical, mental, and emotional well-being; and

WHEREAS, the brave men and women of the United States Armed Forces proudly serve the United States and risk their lives to protect our freedom; and

WHEREAS, the diagnosis known as posttraumatic stress disorder was first defined by the American Psychiatric Association in 1980 to commonly and more accurately understand and treat veterans who had endured severe traumatic combat stress; and

WHEREAS, combat stress has historically been viewed as a mental illness caused by a pre-existing flaw of character or ability and the word "disorder" carries a stigma that perpetuates this misconception; and

WHEREAS, posttraumatic stress injury can occur after experiencing a severely traumatic event, including sexual assault, child abuse, high-impact collisions and crashes, natural disasters, acts of terrorism, and military combat; and

WHEREAS, posttraumatic stress injury is a very common injury to the brain that is treatable and repairable; and

WHEREAS, the North Dakota Cares Coalition and state agencies, including the Department of Human Services, the State Department of Health, and the Department of Veterans' Affairs, continue to educate victims of abuse, crime, and natural disaster, and their families; service members; veterans, their families, and survivors; and the general public about the causes, symptoms, and treatment of posttraumatic stress injury; and

WHEREAS, referring to the complications from posttraumatic stress as a disorder perpetuates the stigma of and bias against mental illness, and this stigma can discourage the injured from seeking proper and timely medical treatment; and

WHEREAS, making posttraumatic stress injury less stigmatizing and more honorable can favorably influence those affected and encourage them to seek help without fear of retribution or shame; and

WHEREAS, proper and timely treatment can diminish suicide rates; and

WHEREAS, all citizens suffering from posttraumatic stress injury deserve our compassion and consideration, those who have received these wounds in action against an enemy of the United States further deserve our tribute and acknowledgment;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly declares June 27, 2017, and each June 27 thereafter, as "Posttraumatic Stress Injury Awareness Day" and the month of June 2017, and each June thereafter, as "Posttraumatic Stress Injury Awareness Month".

Filed March 29, 2017

CHAPTER 473

HOUSE CONCURRENT RESOLUTION NO. 3026

(Representatives Devlin, Delzer, Kempenich, Vigesaa, Weisz)
(Senators Klein, J. Lee)

A concurrent resolution requesting the Legislative Management to consider studying the membership and state supervision of the state's occupational and professional licensing boards in order to retain antitrust law immunity.

WHEREAS, in the February 2015 case "North Carolina State Board of Dental Examiners v. FTC", the United States Supreme Court held if a controlling number of state regulatory board members are market participants, the board must be actively supervised by the state to be immune from antitrust law; and

WHEREAS, market participants hold a majority membership in the dozens of North Dakota occupational and professional licensing boards; and

WHEREAS, in October 2015, the Federal Trade Commission released guidance regarding the level of state supervision required for state regulatory boards to receive immunity from antitrust claims; and

WHEREAS, multiple states have taken executive and legislative action to minimize the risk of regulatory boards being subject to antitrust laws; and

WHEREAS, North Dakota seeks to minimize the risk of its occupational and professional licensing boards being subject to antitrust laws;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Management consider studying the membership and state supervision of the state's occupational and professional licensing boards in order to retain antitrust law immunity; 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-sixth Legislative Assembly.

Filed March 22, 2017

CHAPTER 474**HOUSE CONCURRENT RESOLUTION NO. 3027**

(Representative Streyle)
(Senators Armstrong, Casper, Poolman, Unruh)

A concurrent resolution directing the Legislative Management to consider studying the estimated fiscal impact to the state of refracturing existing oil wells.

WHEREAS, total statewide oil production exceeded four hundred eighteen million barrels in fiscal year 2016; and

WHEREAS, the state provides tax incentives related to other energy resources to promote economic development; and

WHEREAS, research by the Energy and Environmental Research Center indicated a small increase in the percentage of oil recovered can result in billions of barrels of additional oil production;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Management consider studying the estimated fiscal impact to the state of refracturing existing oil wells, including the estimated costs and benefits related to tax collections and any potential tax incentives for refracturing existing oil wells; 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-sixth Legislative Assembly.

Filed April 7, 2017

CHAPTER 475

HOUSE CONCURRENT RESOLUTION NO. 3034

(Representatives K. Koppelman, Devlin, D. Johnson, Keiser, Vigesaa)
(Senators Hogue, Holmberg, Wardner)

A concurrent resolution urging North Dakota to continue strengthening and expanding sister-state ties between the state of North Dakota and the people of the Republic of China (Taiwan); supporting the signing of a Free Trade Agreement and Bilateral Investment Agreement between the United States and Taiwan; and reaffirming support for increasing Taiwan's international profile.

WHEREAS, the State of North Dakota and Taiwan entered a sister-state relationship in 1986; and

WHEREAS, Taiwan shares the same values of freedom, democracy, rule of law, and respect for human rights as the State of North Dakota; and

WHEREAS, the bonds of true friendship and mutually beneficial trade partnership between the State of North Dakota and Taiwan have been strengthened, resulting in strong economic, social, tourism, and cultural exchanges; and

WHEREAS, negotiations for a Bilateral Investment Agreement between Taiwan and the United States are an important step toward further strengthening bilateral trade and paving the way for a Free Trade Agreement between Taiwan and the United States, which will increase North Dakota's exports to Taiwan and promote bilateral investment; and

WHEREAS, Taiwan, as a responsible stakeholder in the international community, is seeking meaningful participation in the International Civil Aviation Organization, United Nations Framework Convention on Climate Change, and International Criminal Police Organization;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly urges North Dakota to continue its endorsement and support of the relationship and shared interests between the people of the Republic of China (Taiwan) and the State of North Dakota and celebrate the thirty-first anniversary of sister-state relations; that the Sixty-fifth Legislative Assembly endorses the signing of the Bilateral Investment Agreement and Free Trade Agreement between Taiwan and the United States; and that the Sixty-fifth Legislative Assembly supports Taiwan's meaningful participation in international organizations that support the health, safety, and well-being of the people of Taiwan.

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the United States Secretary of State, Secretary General of the International Civil Aviation Organization, United States Secretary of Transportation, Governor of the Taiwan Provincial Government, and Director General of the Taipei Economic and Cultural Office in Denver, Colorado.

Filed March 17, 2017

CHAPTER 476**HOUSE CONCURRENT RESOLUTION NO. 3035**

(Representatives Mock, Rich S. Becker, Blum, Delmore, O'Brien, Owens, Sanford,
Vetter)

(Senators Holmberg, Kreun, Laffen, Meyer)

(Approved by the Delayed Bills Committee)

A concurrent resolution congratulating the University of North Dakota's hockey team for its outstanding season and its eighth NCAA Division I hockey national championship.

WHEREAS, on April 9, 2016, the University of North Dakota's hockey team captured the NCAA Division I hockey national championship with a dominating 5-1 victory over Quinnipiac University; and

WHEREAS, the 2015-16 University of North Dakota hockey team was the champion of the National Collegiate Hockey Conference regular season as well as the NCAA Division I hockey national champion, finishing the season with an impressive record of 34 wins, 6 losses, and 4 ties; and

WHEREAS, the leadership of Coach Brad Berry molded a team of outstanding individual athletes into a cohesive, unselfish team with balanced and explosive offense, unyielding defense, and stalwart goaltending; and

WHEREAS, the 2015-16 team, which proudly claimed the eighth University of North Dakota hockey national championship, is an exemplar of the hockey program's enduring fighting spirit and its opulent, unwavering, and extraordinary heritage;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly takes great pride in extending to all members and coaches of the University of North Dakota hockey team its heartiest congratulations for winning the 2016 NCAA Division I hockey national championship; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to each member of the 2015-16 University of North Dakota hockey team, to each of the team's coaches, and to the President of the University of North Dakota.

Filed April 12, 2017

CHAPTER 477

HOUSE CONCURRENT RESOLUTION NO. 3036

(Representatives Mock, P. Anderson, Beadle, Rich S. Becker, Blum, Boehning, Boschee, Carlson, Damschen, Delmore, Dobervich, Ertelt, Guggisberg, Hanson, Hogan, Holman, Howe, M. Johnson, Johnston, Kading, Kasper, Kiefert, B. Koppelman, K. Koppelman, Marschall, McWilliams, Mitskog, Monson, O'Brien, Olson, Owens, Paur, Pyle, Roers Jones, Sanford, Schneider, Schreiber-Beck, Skroch, Trottier, Vetter)

(Senators Campbell, Casper, Clemens, Davison, Dotzenrod, Heckaman, Holmberg, Kreun, Laffen, G. Lee, J. Lee, Luick, Mathern, Meyer, Myrdal, Nelson, Osland, Piepkorn, Robinson, Roers, Sorvaag, Wardner)

(Approved by the Delayed Bills Committee)

A concurrent resolution commemorating the twentieth anniversary of the Red River flood of 1997.

WHEREAS, the record-setting North Dakota winter of 1996-97 featured eight named blizzards resulting in record snowfall accumulations for Grand Forks, Fargo, and Bismarck; and

WHEREAS, on February 14, 1997, the National Weather Service predicted severe flooding along the Red River of the North, including all tributaries, between Wahpeton and Pembina, North Dakota, and subsequently projected flood crests of 17.9 feet in Wahpeton, 38 feet in Fargo, and 49 feet in Grand Forks; and

WHEREAS, Blizzard "Hannah" on April 5-6, 1997, caused an estimated loss of 90,000 head of cattle, downed the 2,060-foot KXJB-TV broadcast tower, toppled nearly 6,000 power poles, and forced approximately 90,000 homes to be without electricity; and

WHEREAS, flood waters along the Red River crested at 19.42 feet on April 6, 1997, and 19.25 feet on April 15, 1997, in Wahpeton and 39.72 feet on April 18, 1997, in Fargo; and

WHEREAS, on April 7, 1997, President Bill Clinton issued a major disaster declaration, as requested by Governor Ed Schafer, for severe flooding in all counties in North Dakota; and

WHEREAS, on April 16, 1997, Grand Forks Mayor Pat Owens recommended residents voluntarily evacuate the city; and

WHEREAS, on April 18, 1997, dikes in Grand Forks, North Dakota and East Grand Forks, Minnesota began to be overtopped, including Lincoln Park, Central Park, and Riverside Park neighborhoods, leading Mayor Owens to order the evacuation of over 50,000 people, which, up to that time, was the largest civilian evacuation in the United States since Atlanta, Georgia in 1864 during the American Civil War; and

WHEREAS, the flood waters pushed miles beyond the banks of the Red River, swamping fields, roads, and towns, submerging an area roughly the size of Delaware; and

WHEREAS, the flood waters in Grand Forks were 4 feet deep throughout downtown, covered rooftops in some neighborhoods, reached inland approximately 3 miles, and ultimately damaged 9,001 homes and 751 businesses; and

WHEREAS, the Grand Forks water treatment plant failed on the morning of April 19, 1997, leaving residents without water for 13 days and without potable water for 23 days; and

WHEREAS, on April 19, 1997, a fire started at the Security Building in a flooded downtown Grand Forks, spread over 3 city blocks, and destroyed 11 historic buildings over the course of two days; and

WHEREAS, the Red River crested in Grand Forks on April 22, 1997, at the historic high water mark of 54.35 feet after which the river level did not fall below 49 feet until April 26, with the river finally receding below flood stage of 28 feet on May 23, 1997; and

WHEREAS, on April 22, 1997, President Bill Clinton, Senators Kent Conrad and Byron Dorgan, and Congressman Earl Pomeroy, visited Grand Forks Air Force Base and committed \$488 million in federal assistance; and

WHEREAS, Red River flood waters ultimately inundated approximately 2,200 square miles of land, resulted in the evacuation of 70,000 residents, and caused approximately \$4 billion worth of damage; and

WHEREAS, the Grand Forks Air Force Base provided instrumental support throughout the disaster, including serving as a shelter for 3,500 evacuees and a medical shelter for more than 400 civilian patients, assembling approximately 800,000 of the 3.5 million sandbags used by the city of Grand Forks, and providing military equipment for fire suppression, evacuation, and civilian transport; and

WHEREAS, 694 homes and 493 other structures in Grand Forks were demolished following the flood, an additional 850 properties were purchased and demolished through a voluntary buyout program, and 161 homes and 414 structures were relocated to other properties to make space for permanent flood protection; and

WHEREAS, in addition to the more than \$48 million in damage to University of North Dakota buildings, 16 of the 22 schools owned by Grand Forks Public School District suffered a total \$72 million in damages, including 3 schools which suffered catastrophic damage; and

WHEREAS, disaster recovery funding from all sources exceeded \$567 million, including more than \$34 million in state and local funding; and

WHEREAS, following the disaster, the administrations of Governor Ed Schafer and Governor John Hoeven and the Legislative Assemblies throughout the decade following the flood continued to provide support for the cleanup, restoration, and flood prevention efforts in the Red River Valley; and

WHEREAS, in January 2007, the \$409 million Grand Forks Flood Prevention Project was completed, featuring approximately 8 miles of levees and walls expandable to protect against a 63-foot flood, 20 miles of recreational trails, two pedestrian bridges, and 2,200 acres of green space; and

WHEREAS, as a result of the Red River flood of 1997, the National Weather Service has changed its flood forecasting methodology, increased the number of

monitoring gauges, updated satellite imagery, and revised surveys of the Red River channel; and

WHEREAS, major capital projects in the Red River Valley, including the \$19 million Grand Forks County office building, the \$104 million Ralph Engelstad Arena, and the \$16 million downtown Corporate Center, were built using flood mitigation designs such as raised foundations, elevated utility rooms, and integrated dewatering systems; and

WHEREAS, the City of Grand Forks has adopted other flood-stricken communities across the country to assist in flood prevention and management practices, including St. Bernard Parish, Louisiana; Cedar Rapids, Iowa; Minot, North Dakota; Findley, Ohio; and Biloxi, Mississippi; and

WHEREAS, flood mitigation lessons learned from the Red River flood of 1997 have been applied to city plans and flood prevention projects in communities throughout the Upper Midwest, including the cities of Valley City, Bismarck, Minot, Wahpeton, and Fargo;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly recognizes the hard work exhibited by all communities impacted by winter storms and flooding during the winter of 1996 and the spring of 1997 in preventing and responding to historic natural events; and

BE IT FURTHER RESOLVED, that the Sixty-fifth Legislative Assembly congratulates all communities throughout the Red River Valley on their perseverance and commitment to rebuild following the devastation associated with the flood of 1997; and

BE IT FURTHER RESOLVED, that the Sixty-fifth Legislative Assembly expresses its gratitude and appreciation on behalf of the people of North Dakota to the United States federal government, United States Air Force, North Dakota National Guard, and countless businesses, organizations, and volunteers who assisted in the protection, recovery, and rebuilding of all 1997 flood-impacted communities; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the base commander of the Grand Forks Air Force Base; the director of the Federal Emergency Management Agency; the mayors of Wahpeton, Fargo, Grand Forks, Drayton, and Pembina; the North Dakota Adjutant General; the North Dakota Congressional delegation; former President Bill Clinton; former Governor Ed Schafer; the 1997 North Dakota Congressional delegation; and former Grand Forks Mayor Pat Owens.

Filed April 20, 2017

CHAPTER 478

HOUSE CONCURRENT RESOLUTION NO. 3037

(Representatives Mock, Carlson, Delzer, Hogan, Mitskog, Porter, Seibel)
(Senators Anderson, Heckaman, Oban, Unruh, Wardner)
(Approved by the Delayed Bills Committee)

A concurrent resolution requesting the Congress and the President of the United States to enact legislation to expand and extend the current federal tax credit for carbon capture, utilization, and storage under Section 45Q of the Internal Revenue Code; to provide appropriations to the United States Department of Energy sufficient to achieve and sustain a robust carbon capture research, development, demonstration, and deployment program; to support the inclusion of economically and environmentally beneficial carbon capture projects in any forthcoming federal infrastructure initiative; to support policies to increase the operational efficiency; and to support the preservation of a fuel-diverse electric generation portfolio critical to our domestic economic, energy, and national security.

WHEREAS, fossil fuels including coal, natural gas, and oil provide more than three-quarters of global and United States' primary energy demand and, according to the International Energy Agency, will continue to do so for the next quarter-century or more under current energy and environmental policies; and

WHEREAS, recognition of the value and enduring role of fossil fuels as an essential source of energy around the world and in the United States for decades to come has led environmental advocates to support the accelerated development and broad deployment of carbon capture technologies for fossil fuels as part of a sustainable energy future; and

WHEREAS, recognition of the role carbon capture can play in creating new opportunities for fossil fuels has led fossil energy advocates to similarly support the development and deployment of carbon capture technologies for fossil fuels; and

WHEREAS, the United States and North Dakota have abundant supplies of fossil energy, the production and use of which provide important economic, energy, and national security benefits to our nation and our state; and

WHEREAS, North Dakota is the nation's 6th largest producer of fossil energy, 2nd largest producer of oil, 2nd largest producer of lignite coal, 11th largest producer of natural gas, the largest consumer of coal for industrial use, and the 10th largest consumer of coal for electricity generation; and

WHEREAS, according to the Department of Energy, "A diverse portfolio of energy resources is critical to U.S. energy and national policy...being more robust and resilient in comparison to a system that is heavily dependent on a limited set of energy resources...[and] helps insulate the economy from certain risks, including price volatility and risks from supply disruptions"; and

WHEREAS, reliable and affordable electricity is vital to economic growth and job creation in North Dakota and the overall welfare of our citizens; and

WHEREAS, 73 percent of the electricity generated in North Dakota is produced from fossil fuels and the average residential price of electricity in North Dakota is the 6th lowest in the nation and is 18 percent below the national average; and

WHEREAS, continued research and development of carbon reduction strategies for fossil fuels is an essential element of a forward-looking sustainable energy strategy for North Dakota, our nation, and the world which will simultaneously maximize both environmental quality and economic opportunity; and

WHEREAS, the Energy and Environmental Research Center at the University of North Dakota, the Great Plains Synfuels Plant in Beulah, and the Lignite Energy Council are engaged in efforts to address environmental, health, and economic impacts of energy production and use through collaborations on applied carbon dioxide research, practical applications, workforce development, and public education; and

WHEREAS, legislation was introduced in the 114th Congress to enhance and extend federal tax incentives, under Section 45Q of the Internal Revenue Code, which serve to sustain and promote such collaborations and to encourage private industry in energy generation, manufacturing, and agriculture to adopt and deploy existing and emerging technologies that increase carbon capture, utilization, and storage; and

WHEREAS, the coming together of environmental and energy advocates in support of carbon capture is reflected in the groundbreaking coalition of environmental advocacy groups, labor unions, and energy producers from the coal, oil and gas, ethanol, and algae-biomass industries working together in support of federal legislation; and

WHEREAS, similar legislation is now under consideration in the 115th Congress, and Congress and the President also are considering enactment of a large-scale federal infrastructure initiative to strengthen our nation's transportation, public works, and energy infrastructure that also could serve as a vehicle for advancing "jobs-ready" carbon capture projects; and

WHEREAS, according to the Department of Energy, "A combination of tax incentives and research, development, demonstration, and deployment will be critical to developing transformational carbon capture technologies and to driving down the costs of capture";

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly requests Congress and the President of the United States to enact legislation to expand and extend the current federal tax credit for carbon capture, utilization, and storage under Section 45Q of the Internal Revenue Code; to provide appropriations to the United States Department of Energy sufficient to achieve and sustain a robust carbon capture research, development, demonstration, and deployment program; to support the inclusion of economically and environmentally beneficial carbon capture projects in any forthcoming federal infrastructure initiative; to support policies to increase the operational efficiency, and thereby the environmental performance, of existing electric-generating units in the United States; and to support the preservation of a fuel-diverse electric generation portfolio critical to our domestic economic, energy, and national security; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution by certified mail, return receipt requested, to the President of the United States, the President and Secretary of the United States Senate, the Speaker and Clerk of the United States House of Representatives, the Secretary of the United States Department of Energy, and to each member of the North Dakota Congressional Delegation.

Filed April 26, 2017

SENATE CONCURRENT RESOLUTIONS

CHAPTER 479

SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Management)
(Budget Section)

A concurrent resolution authorizing the Budget Section of the Legislative Management to hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress.

WHEREAS, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 creating the community services block grant program; and

WHEREAS, the Legislative Assembly is required to conduct public hearings; and

WHEREAS, the Appropriations Committees have met the public hearing requirement for community services block grant program money expected for the next biennium by the Department of Commerce; and

WHEREAS, the Sixty-fifth Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by Congress after recess or adjournment of the Legislative Assembly; and

WHEREAS, the Legislative Assembly will not meet in regular session during 2018, and thus its public hearing responsibility for grants not approved by the Sixty-fifth Legislative Assembly must be delegated to a legislative entity.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Department of Commerce appropriation bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grant program money for the period ending September 30, 2019; 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-fifth Legislative Assembly through September 30, 2019, 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 April 17, 2017

CHAPTER 480**SENATE CONCURRENT RESOLUTION NO. 4003**

(Senator Wardner)

A concurrent resolution requesting the Legislative Management to study the current juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

WHEREAS, within the judicial branch, the juvenile court system is responsible for the adjudication and disposition of allegations that a juvenile is deprived, unruly, or has committed a delinquent act; and

WHEREAS, in addition to the juvenile court process, other entities are involved in addressing juvenile justice issues, including the Department of Corrections and Rehabilitation through the Division of Juvenile Services, the Department of Human Services, the Commission on Legal Counsel for Indigent Defense, regional human service centers, K-12 public schools, and a wide variety of treatment providers; and

WHEREAS, an effective resolution of juvenile justice issues must address recidivism, improve service access, efficiently use system resources, and collaborate with other service systems to identify the spectrum of needs of a juvenile involved in the system; and

WHEREAS, North Dakota is in the midst of a Justice Reinvestment Initiative in the adult justice system which began two years ago, has resulted in the passage of landmark legislation, and will continue into the next biennium; and

WHEREAS, the current juvenile justice process has not been reviewed in almost thirty years; and

WHEREAS, the current process poses concerns for ensuring the most effective use of probation services, access to adequate support services, the potential for unwarranted institutional placements, and the need to distinguish between deprived juveniles and unruly and delinquent juveniles with respect to dispositions and service access.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Management consider studying the current juvenile justice process, the appropriate age when a juvenile is considered capable of committing a criminal offense, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process; and

BE IT FURTHER RESOLVED, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-sixth Legislative Assembly.

Filed April 3, 2017

CHAPTER 481**SENATE CONCURRENT RESOLUTION NO. 4007**

(Senator Dever)
(Representative Maragos)

A concurrent resolution designating Senate and House employment positions and fixing compensation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That for the Sixty-fifth Legislative Assembly, the following positions are designated as employee positions of the House and Senate and are to be paid the daily wages indicated:

	SENATE	
Secretary of the senate		\$196
Assistant secretary of the Senate		177
Journal reporter		191
Calendar clerk		177
Bill clerk		165
Recording clerk		160
Sergeant-at-arms		160
Administrative assistant to majority leader		174
Staff assistant to majority leader		174
Administrative assistant to minority leader		174
Staff assistant to minority leader		174
Chief committee clerk		184
Appropriations committee clerk		174
Assistant appropriations committee clerk		167
Committee clerk for three-day committee		167
Committee clerk for two-day committee		162
Assistant committee clerk		162
Deputy sergeant-at-arms		122
Chief page		135
Legislative assistant		115
	HOUSE	
Chief clerk		196
Assistant chief clerk		177
Journal reporter		191
Calendar clerk		177
Bill clerk		165
Recording clerk		160
Sergeant-at-arms		160
Administrative assistant to majority leader		174
Staff assistant to majority leader		174
Administrative assistant to minority leader		174
Staff assistant to minority leader		174
Administrative assistant to Speaker		174
Deputy chief clerk		184

Appropriations committee clerk	174
Assistant appropriations committee clerk	167
Committee clerk for three-day committee	167
Committee clerk for two-day committee	162
Assistant committee clerk	162
Deputy sergeant-at-arms	122
Chief legislative assistant	135
Legislative assistant	115

BE IT FURTHER RESOLVED, that each employee of the Sixty-fifth Legislative Assembly is entitled to an additional \$1 per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least 45 days, as either an employee of the House or the Senate, and to receive this additional compensation, which may not exceed \$10 per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

BE IT FURTHER RESOLVED, that each majority and each minority leader is entitled to one administrative assistant and two staff assistants, but each majority or minority leader may hire fewer or more assistants so long as the total daily compensation for the assistants hired does not exceed the total daily amount authorized for those positions by this resolution; and

BE IT FURTHER RESOLVED, that the report of the Employment Committee of the respective house identify the number of employees in each position by listing every employee and the position for which employed; and

BE IT FURTHER RESOLVED, that with the approval of the Employment Committee of the respective house, a position may be converted to a part-time position, with the daily compensation converted to a per hour rate of pay, and a part-time employee may hold more than one part-time position so long as the positions held do not exceed a full-time equivalent position; and

BE IT FURTHER RESOLVED, an employee is entitled to pay for any day the Legislative Assembly is in recess and any employee is required to be present for committee hearings or other legislative business; and

BE IT FURTHER RESOLVED, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided by this resolution for that employee ceases effective the last day of employment.

Filed January 25, 2017

CHAPTER 482

SENATE CONCURRENT RESOLUTION NO. 4008

(Senators Casper, Kreun, Oban)
(Representatives Porter, Roers Jones, Seibel)

A concurrent resolution urging the federal government to refrain from enacting regulations that threaten the reliability and affordability of electric power in North Dakota and to increase its support for research, development, and deployment for next generation carbon-based energy generation.

WHEREAS, North Dakota has at least an 800-year supply of economically recoverable lignite coal at current production rates and has become the second largest oil producer in the United States; and

WHEREAS, these energy resources have resulted in North Dakota having the fourth lowest energy costs in the nation; and

WHEREAS, the North Dakota lignite industry generates over seventy-five percent of the electricity in the state and provides affordable electricity to more than two million families throughout the upper midwest; and

WHEREAS, the lignite coal industry contributes more than 3.4 billion dollars in total business activity to North Dakota; and

WHEREAS, the lignite coal industry employs fifteen thousand individuals with some of the highest wages in the state; and

WHEREAS, economic analysis by the North Dakota State University agribusiness and applied economics researchers estimates a new five hundred megawatt, coal-based electric generating facility would create 54.3 million dollars in personal income, 40 million dollars in retail sales, and 173.7 million dollars in total business activity each year; and

WHEREAS, the current value of the state's existing coal-based infrastructure is 18.6 billion dollars; and

WHEREAS, state tax revenues attributed to the lignite industry have increased from 61.4 million dollars in 2000 to over 100 million dollars in 2015; and

WHEREAS, current federal regulations represent a de facto ban on the construction of new, efficient, and cost-effective coal-based power plants and threaten the continued operation of existing coal-based power plants; and

WHEREAS, federal policy gives other electric generation resources a significant competitive advantage; and

WHEREAS, uncertainty around federal regulations continues to discourage investment in coal-based facilities; and

WHEREAS, North Dakota continues to serve as a model for responsible production of its natural resources, including a longstanding standard of reclaiming mined land to as good or better than before mining; and

WHEREAS, North Dakota continues to be one of only seven states meeting all federal ambient air quality standards; and

WHEREAS, affordable, reliable power is the backbone of North Dakota's established and emerging industries; and

WHEREAS, advancements in carbon capture utilization and storage can unlock enormous potential for the state's energy industries and economy;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly urges the federal government to refrain from enacting regulations that threaten the reliability and affordability of electric power in North Dakota and to increase its support for research, development, and deployment for next generation carbon-based energy generation; and

BE IT FURTHER RESOLVED, that the federal government is urged to withdraw and revise regulations and other administrative actions that negatively impact the ability to utilize North Dakota's lignite coal reserves for affordable and reliable domestic power; and

BE IT FURTHER RESOLVED, that the federal government is urged to work with the state, the North Dakota Congressional Delegation, and the North Dakota lignite industry to design and implement regulatory programs based on sound science with inputs from local sources, recognize the status of existing technology, and develop timelines that make economic sense for the producers and consumers of electricity and byproducts derived from North Dakota lignite; and

BE IT FURTHER RESOLVED, that the federal government is urged to increase its partnership with the state of North Dakota and industry to develop technological solutions to enable the continuation of lignite-based electric generation; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the Administrator of the United States Environmental Protection Agency, the Secretary of the Department of Energy, the Secretary of the Department of Interior, and each member of the North Dakota Congressional Delegation.

Filed March 17, 2017

CHAPTER 483

SENATE CONCURRENT RESOLUTION NO. 4014

(Senators Holmberg, Meyer, Wardner, Heckaman)

(Representatives Carlson, Mock)

(Approved by the Delayed Bills Committee)

A concurrent resolution supporting the development of the unmanned aircraft systems industry in North Dakota and throughout the United States, congratulating the Federal Aviation Administration on the first Beyond Visual Line of Sight Certificate of Authorization in the United States, and encouraging further cooperation with the Federal Aviation Administration to safely integrate unmanned aircraft systems into the national airspace.

WHEREAS, North Dakota has made significant investments in the unmanned aircraft systems industry in technology, permitting, process, and economic development, including the Northern Plains Unmanned Aircraft Systems Test Site, Grand Sky Business Park, and North Dakota University System, which have led to successes of startup unmanned aircraft systems companies and other private sector economic investment in the state; and

WHEREAS, the Northern Plains Unmanned Aircraft Systems Test Site was chosen as a Federal Aviation Administration unmanned aircraft systems test site in December 2013, and was the first test site to conduct unmanned aircraft systems flights in May 2014; and

WHEREAS, the state desires to grow the unmanned aircraft systems industry and assist traditional industries, such as agriculture and energy, to grow through the use of unmanned aircraft systems; and

WHEREAS, the state desires to attract unmanned aircraft systems companies to invest in and employ the hard working people of the state to take advantage of the tremendous capabilities of unmanned aircraft systems to support infrastructure, rail and highway transportation, agriculture, energy, public safety, and natural resource management; and

WHEREAS, the state desires to speak with one voice to the unmanned aircraft systems industry through the Legislative Assembly and the Governor to promote the unmanned aircraft systems industry across the nation and to serve as the model for all states to properly implement rules and procedures for the safe integration of unmanned aircraft systems into the national airspace; and

WHEREAS, the Northern Plains Unmanned Aircraft Systems Test Site and the Federal Aviation Administration have collaborated to create the first Beyond Visual Line of Sight Certificate of Authorization, and in partnership with Grand Sky and the United States Air Force seek to put that Certificate of Authorization into public use; and

WHEREAS, the successes in this state may serve as a model for the Federal Aviation Administration to expand the geographic reach of the recently approved Certificate of Authorization to broaden the research, development, testing, evaluation,

engineering, and training opportunities necessary to support unmanned aircraft systems growth in the state and across the country;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly supports the development of the unmanned aircraft systems industry in North Dakota and throughout the United States, congratulates the Federal Aviation Administration on the first Beyond Visual Line of Sight Certificate of Authorization in the United States, and encourages further cooperation with the Federal Aviation Administration to safely integrate unmanned aircraft systems into the national airspace; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Administrator of the Federal Aviation Administration and to each member of the North Dakota Congressional Delegation.

Filed April 21, 2017

CHAPTER 484**SENATE CONCURRENT RESOLUTION NO. 4015**

(Senators Wardner, Heckaman)

(Representatives Carlson, Mock)

(Approved by the Delayed Bills Committee)

A concurrent resolution designating May 15, 2017, as "Peace Officers Memorial Day".

WHEREAS, peace officers make an invaluable contribution to the safety of North Dakotans and it is considered appropriate there be, in each year, a day to mark and pay tribute to the hard work, dedication, and sacrifices made by North Dakota peace officers; and

WHEREAS, "Peace Officers Memorial Holiday" is held annually in the United States on May 15 in honor of federal, tribal, state, and local officers killed or disabled in the line of duty; and

WHEREAS, it is important to strengthen the fellowship and heritage of law enforcement, family relationships, and the memory of the officers who have fallen or passed away; and

WHEREAS, "Peace Officers Memorial Day" promotes and recognizes high standards of ethics, integrity, honor, courtesy, and professionalism which develop and maintain citizen confidence in the law enforcement community; and

WHEREAS, peace officers reflect a positive image of law enforcement to assist in providing safety, security, and protection of the rights of individuals, regardless of race, creed, religion, gender, or national origin; and

WHEREAS, in the last two years North Dakotans have mourned the tragic loss of two peace officers who gave their lives in the line of duty, Jason Moszer, an officer with the Fargo Police Department who died on February 11, 2016; and Colt Allery, a Deputy with the Rolette County Sheriff's Office who died on January 18, 2017; and

WHEREAS, the lives of those two peace officers, along with the many other North Dakota peace officers who made the ultimate sacrifice will be commemorated on the grounds of the State Capitol in Bismarck and across the state on May 15, "Peace Officers Memorial Day";

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly designates May 15, 2017, as "Peace Officers Memorial Day" as proclaimed by the President of the United States and the Governor; and

BE IT FURTHER RESOLVED, that the State of North Dakota shall honor "Peace Officers Memorial Day" annually with an appropriate blue light display on the State Capitol; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Attorney General, the North Dakota Peace Officers Association, the North Dakota Sheriff's and Deputies Association, the Chiefs of Police Association of North Dakota, and the North Dakota Fraternal Order of Police.

Filed April 21, 2017

HOUSE MEMORIAL RESOLUTIONS

CHAPTER 485

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:

LeRoy George Bernstein, who served in the 51st through the 59th Legislative Assemblies, from District 45, died January 4, 2017;

Elaine Vig Caldis, who served in the 46th and 47th Legislative Assemblies, from District 17, died September 30, 2015;

Lyle L. Dawson, Jr., who served in the 40th and 41st Legislative Assemblies, from District 35, died March 29, 2015;

Donald Dean Dietrich, who served in the 59th and 60th Legislative Assemblies, from District 42, died December 11, 2016;

Gordon Fredrick Emerson, who served in the 41st Legislative Assembly, from District 5, died August 9, 2016;

Charles "Chuck" Frank Fleming, who served in the 42nd through the 46th Legislative Assemblies, from District 10, died July 13, 2016;

Chester "Chet" Fossum, who served in the 36th through the 40th Legislative Assemblies, from District 28, died May 22, 2015;

Arthur David Goffe, who served in the 52nd and 53rd Legislative Assemblies, from District 24, died March 6, 2016;

Richard Anthony "Dick" Hentges, who serviced in the 41st through 43rd Legislative Assemblies, from District 21, died March 9, 2017.

Gordon John Hill, who served in the 45th Legislative Assembly, from District 8, died July 22, 2015;

Sebastian Fabian "Buckshot" Hoffner, who served in the 38th and 39th, the 41st and 42nd, and the 48th Legislative Assemblies, from District 12, died December 17, 2015;

Curt Hofstad, who served in the 60th through the 64th Legislative Assemblies, from District 15, died June 18, 2016;

Ernest N. Johnson, who served in the 36th through the 41st Legislative Assemblies, from District 15, died April 4, 2015;

James A. Kerzman, who served in the 52nd through the 56th Legislative Assemblies, from District 35, and in the 57th through the 61st Legislative Assemblies, from District 31, died June 20, 2015;

Paul Patrick, who served in the 42nd Legislative Assembly, from District 8, died January 16, 2017;

Charles E. "Chuck" Orange, who served in the 43rd and 44th Legislative Assemblies, from District 18, died April 2, 2016;

Emil J. Riehl, who served in the 45th through the 50th Legislative Assemblies, from District 35, died February 27, 2016;

Enoch Thorsgard, who served in the 41st through the 46th Legislative Assemblies, from District 19, died December 16, 2015;

Harold Neil Trautman, who served in the 50th through the 52nd Legislative Assemblies, from District 48, died July 11, 2015;

Vernon E. Wagner, who served in the 38th Legislative Assembly, from District 27, in the 39th through the 44th Legislative Assemblies, from District 32, and in the 45th through the 47th Legislative Assemblies, from District 47, died May 31, 2016;

Cheryl Ann Watkins, who served in the 43rd and 44th Legislative Assemblies, from District 21, died September 3, 2016;

Wade Allen Williams, who served in the 48th through the 52nd Legislative Assemblies, from District 29, died May 12, 2015; and

WHEREAS, we now pause to mourn the passing of our former House of Representatives colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased Representatives.

Filed March 22, 2017

SENATE MEMORIAL RESOLUTIONS

CHAPTER 486

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:

Howard A. Freed, who served in the 40th through the 45th Legislative Assemblies, from District 37, died March 8, 2017.

Perry Bernard Grotberg, who served in the 47th and 48th Legislative Assemblies, from District 24, died October 16, 2015.

E. Gene Hilken, who served in the 48th through the 51st Legislative Assemblies, from District 31, died March 14, 2016.

Sebastian Fabian "Buckshot" Hoffner, who served in the 43rd through the 46th Legislative Assemblies, from District 12, died December 17, 2015.

Shirley Williams Lee, who served in the 43rd through the 48th Legislative Assemblies, from District 8, died February 8, 2016.

Charles E. "Chuck" Orange, who served in the 45th and 46th Legislative Assemblies, from District 18, died April 2, 2016.

James "Jim" Pomeroy, who served in the 60th and 61st Legislative Assemblies, from District 27, died April 8, 2016.

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, 2017