

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2117

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to create and enact a new subsection to section 43-17-32.1, a new
2 subsection to section 44-04-17.1, a new subsection to section 44-04-18, a new subsection to
3 section 44-04-18.7, and section 44-04-21.3 of the North Dakota Century Code, relating to open
4 records and open meetings; to amend and reenact subsections 10, 12, and 13 of section
5 44-04-17.1, subsections 5 and 7 of section 44-04-18, subsection 1 of section 44-08-18.1,
6 subsection 6 of section 44-04-19.1, subsection 5 of section 44-04-19.2, and subsections 1
7 and 3 of section 44-04-21.2 of the North Dakota Century Code, relating to open records and
8 open meetings; and to provide a penalty.

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

10 **SECTION 1.** A new subsection to section 43-17-32.1 of the 1999 Supplement to the
11 North Dakota Century Code is created and enacted as follows:

12 Any medical record of a patient, or other document containing personal information
13 about a patient, which is obtained by the board is an exempt record as defined in
14 section 44-04-17.1.

15 **SECTION 2. AMENDMENT.** Subsections 10, 12, and 13 of section 44-04-17.1 of the
16 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

17 10. "Political subdivision" includes any county or city, regardless of the adoption of any
18 home rule charter, and any airport authority, township, school district, park district,
19 rural fire protection district, water resource district, solid waste management
20 authority, rural ambulance service district, irrigation district, hospital district, soil
21 conservation district, recreation service district, railroad authority, or district health
22 unit.

23 12. "Public entity" means all:

- 1 a. Public or governmental bodies, boards, bureaus, commissions, or agencies of
2 the state, including any entity created or recognized by the Constitution of
3 North Dakota, state statute, or executive order of the governor or any task
4 force or working group created by the individual in charge of a state agency or
5 institution, to exercise public authority or perform a governmental function;
6 b. Public or governmental bodies, boards, bureaus, commissions, or agencies of
7 any political subdivision of the state and any entity created or recognized by
8 the Constitution of North Dakota, state statute, executive order of the
9 governor, resolution, ordinance, rule, bylaw, or executive order of the chief
10 executive authority of a political subdivision of the state to exercise public
11 authority or perform a governmental function; and
12 c. Organizations or agencies supported in whole or in part by public funds, or
13 expending public funds.

14 13. "Public funds" means ~~funds~~ cash and other assets with more than minimal value
15 received from the state or any political subdivision of the state.

16 **SECTION 3.** A new subsection to section 44-04-17.1 of the 1999 Supplement to the
17 North Dakota Century Code is created and enacted as follows:

18 "Task force or working group" means a group of individuals which has been
19 formally designated to meet as a group to assist, advise, or act on behalf of the
20 individual in charge of a state agency or institution when a majority of the members
21 of the group are not employees of the agency or institution.

22 **SECTION 4. AMENDMENT.** Subsections 5 and 7 of section 44-04-18 of the 1999
23 Supplement to the North Dakota Century Code are amended and reenacted as follows:

24 5. Any request under this section for records in the possession of a public entity by a
25 party to a criminal or civil action or ~~adverse~~ adversarial administrative proceeding
26 involving that in which the public entity is a party, or by an agent of the party, must
27 comply with applicable discovery rules and be made to the attorney representing
28 that entity in the criminal or civil action or ~~adverse~~ adversarial administrative
29 proceeding. The public entity may deny a request from a party or an agent of a
30 party under this subsection if the request seeks records that are privileged under
31 applicable discovery rules.

1 7. This section is violated when a person's right to review or receive a copy of a
2 record that is not exempt or confidential is denied or unreasonably delayed or
3 when a fee is charged in excess of the amount authorized in subsection 2.

4 **SECTION 5.** A new subsection to section 44-04-18 of the 1999 Supplement to the
5 North Dakota Century Code is created and enacted as follows:

6 A disclosure of a requested record under this section is not a waiver of any
7 copyright held by the public entity in the requested record or of any applicable
8 evidentiary privilege.

9 **SECTION 6. AMENDMENT.** Subsection 1 of section 44-04-18.1 of the 1999
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11 1. Any record of a public employee's medical treatment or use of an employee
12 assistance program is not to become part of that employee's personnel record and
13 is confidential and may not be released without the written consent of the
14 employee. As used in this section, the term "public employee" includes any
15 ~~person~~ individual who has applied for employment, is employed, or has been
16 employed by a public entity.

17 **SECTION 7.** A new subsection to section 44-04-18.7 of the 1999 Supplement to the
18 North Dakota Century Code is created and enacted as follows:

19 A computerized index created by a criminal justice agency of names included in
20 criminal files, whether active or inactive, is an exempt record.

21 **SECTION 8. AMENDMENT.** Subsection 6 of section 44-04-19.1 of the 1999
22 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23 6. Following the final completion of the civil or criminal litigation or the adversarial
24 administrative proceeding, including the exhaustion of all appellate remedies,
25 attorney work product must be made available for public disclosure by the public
26 entity, unless another exception to section ~~44-04-19~~ 44-04-18 applies or if
27 disclosure would have an adverse fiscal effect on the conduct or settlement of
28 other pending or reasonably predictable civil or criminal litigation or adversarial
29 administrative proceedings.

30 **SECTION 9. AMENDMENT.** Subsection 5 of section 44-04-19.2 of the 1999
31 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1 5. All meetings of the governing body of a public entity that are not open to the public
2 must be recorded electronically or on audiotape or videotape. The recording must
3 be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or
4 to the attorney general for the purpose of administrative review under section
5 44-04-21.1. The attorney general may not disclose to the public any recording
6 received under this subsection and must return the recording to the governing
7 body upon completion of the administrative review. The recording may be
8 disclosed upon majority vote of the governing body unless the executive session
9 was required to be confidential. Disclosure of the recording by a public servant
10 except as provided in this subsection is a violation of section 12.1-13-01. All
11 recordings under this subsection must be retained for a minimum of six months
12 after the executive session that is the subject of the recording.

13 **SECTION 10. AMENDMENT.** Subsections 1 and 3 of section 44-04-21.2 of the 1999
14 Supplement to the North Dakota Century Code are amended and reenacted as follows:

15 1. A violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 ~~is not~~
16 ~~a violation of section 12.1-11-06,~~ but may be the subject of a civil action brought by
17 an interested person or entity. For an alleged violation of section 44-04-18, the
18 complaint must be accompanied by a dated, written request for the requested
19 record. If a court finds that any of these sections have been violated by a public
20 entity, the court may award declaratory relief, an injunction, a writ of prohibition or
21 mandamus, costs, disbursements, and reasonable attorney's fees against the
22 entity. For an intentional or knowing violation of section 44-04-18, 44-04-19,
23 44-04-19.2, 44-04-20, or 44-04-21, the court may also award damages in an
24 amount equal to one thousand dollars or actual damages caused by the violation,
25 whichever is greater. An action under this subsection must be commenced within
26 sixty days of the date the person knew or should have known of the violation or
27 within thirty days of issuance of an attorney general's opinion on the alleged
28 violation, whichever is later. Venue for an action is in the county where the entity
29 has its principal office or, if the entity does not have a principal office within the
30 state, in Burleigh County.

1 3. The remedies provided in this section are not available if a violation of section
2 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 has been corrected before
3 a civil action is filed and no person has been prejudiced or harmed by the delay.
4 An interested person or entity may not file a civil action under this section seeking
5 attorney's fees or damages, or both, until at least three working days after
6 providing notice of the alleged violation to the chief administrative officer for the
7 public entity. This subsection does not apply if the attorney general has found
8 under section 44-04-21.1, on a prior occasion, that the public entity has violated
9 section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21.

10 **SECTION 11.** Section 44-04-21.3 of the North Dakota Century Code is created and
11 enacted as follows:

12 **44-04-21.3. Attorney general referral and criminal penalties.** The attorney general
13 shall refer to the appropriate state's attorney any public servant as defined in section
14 12.1-01-04 who has been found in more than one opinion issued pursuant to section
15 44-04-21.1 to have violated section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21. A
16 public servant as defined in section 12.1-01-04 who knowingly violates section 44-04-18,
17 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 is guilty of an offense under section 12.1-11-06.