

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 subsection 1 of section 6-09-35,
5 subsections 10, 12, and 13 of section 44-04-17.1, subsections 5 and 7 of section 44-04-18,
6 subsection 1 of section 44-08-18.1, subsection 6 of section 44-04-19.1, subsection 5 of section
7 44-04-19.2, and subsections 1 and 3 of section 44-04-21.2 of the North Dakota Century Code,
8 relating to open records and open meetings; and to provide a penalty.

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

10 **SECTION 1. AMENDMENT.** Subsection 1 of section 6-09-35 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 1. Commercial or financial information of a customer, whether obtained directly or
13 indirectly, except for routine credit inquiries or unless required by due legal
14 process. As used in this subsection, "customer" means any person who has
15 transacted or is transacting business with, or has used or is using the services of,
16 the Bank of North Dakota, or for whom the Bank of North Dakota has acted as a
17 fiduciary with respect to trust property.

18 **SECTION 2.** A new subsection to section 43-17-32.1 of the 1999 Supplement to the
19 North Dakota Century Code is created and enacted as follows:

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

23 **SECTION 3. AMENDMENT.** Subsections 10, 12, and 13 of section 44-04-17.1 of the
24 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 1 10. "Political subdivision" includes any county or city, regardless of the adoption of any
2 home rule charter, and any airport authority, township, school district, park district,
3 rural fire protection district, water resource district, solid waste management
4 authority, rural ambulance service district, irrigation district, hospital district, soil
5 conservation district, recreation service district, railroad authority, or district health
6 unit.
- 7 12. "Public entity" means all:
- 8 a. Public or governmental bodies, boards, bureaus, commissions, or agencies of
9 the state, including any entity created or recognized by the Constitution of
10 North Dakota, state statute, or executive order of the governor or any task
11 force or working group created by the individual in charge of a state agency or
12 institution, to exercise public authority or perform a governmental function;
- 13 b. Public or governmental bodies, boards, bureaus, commissions, or agencies of
14 any political subdivision of the state and any entity created or recognized by
15 the Constitution of North Dakota, state statute, executive order of the
16 governor, resolution, ordinance, rule, bylaw, or executive order of the chief
17 executive authority of a political subdivision of the state to exercise public
18 authority or perform a governmental function; and
- 19 c. Organizations or agencies supported in whole or in part by public funds, or
20 expending public funds.
- 21 13. "Public funds" means ~~funds~~ cash and other assets with more than minimal value
22 received from the state or any political subdivision of the state.

23 **SECTION 4.** A new subsection to section 44-04-17.1 of the 1999 Supplement to the
24 North Dakota Century Code is created and enacted as follows:

25 "Task force or working group" means a group of individuals who have been
26 formally appointed and delegated to meet as a group to assist, advise, or act on
27 behalf of the individual in charge of a state agency or institution when a majority of
28 the members of the group are not employees of the agency or institution.

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

1 5. Any request under this section for records in the possession of a public entity by a
2 party to a criminal or civil action or ~~adverse~~ adversarial administrative proceeding
3 ~~involving that~~ in which the public entity is a party, or by an agent of the party, must
4 comply with applicable discovery rules and be made to the attorney representing
5 that entity in the criminal or civil action or ~~adverse~~ adversarial administrative
6 proceeding. The public entity may deny a request from a party or an agent of a
7 party under this subsection if the request seeks records that are privileged under
8 applicable discovery rules.

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

12 **SECTION 6.** A new subsection to section 44-04-18 of the 1999 Supplement to the
13 North Dakota Century Code is created and enacted as follows:

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

17 **SECTION 7. AMENDMENT.** Subsection 1 of section 44-04-18.1 of the 1999
18 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

25 **SECTION 8.** A new subsection to section 44-04-18.7 of the 1999 Supplement to the
26 North Dakota Century Code is created and enacted as follows:

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

29 **SECTION 9. AMENDMENT.** Subsection 6 of section 44-04-19.1 of the 1999
30 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

8 **SECTION 10. AMENDMENT.** Subsection 5 of section 44-04-19.2 of the 1999
9 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10 5. All meetings of the governing body of a public entity that are not open to the public
11 must be recorded electronically or on audiotape or videotape. The recording must
12 be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or
13 to the attorney general for the purpose of administrative review under section
14 44-04-21.1. The attorney general may not disclose to the public any recording
15 received under this subsection and must return the recording to the governing
16 body upon completion of the administrative review. The recording may be
17 disclosed upon majority vote of the governing body unless the executive session
18 was required to be confidential. Disclosure of the recording by a public servant
19 except as provided in this subsection is a violation of section 12.1-13-01. All
20 recordings under this subsection must be retained for a minimum of six months
21 after the executive session that is the subject of the recording.

22 **SECTION 11. AMENDMENT.** Subsections 1 and 3 of section 44-04-21.2 of the 1999
23 Supplement to the North Dakota Century Code are amended and reenacted as follows:

24 1. A violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 ~~is not~~
25 ~~a violation of section 12.1-11-06, but~~ may be the subject of a civil action brought by
26 an interested person or entity. For an alleged violation of section 44-04-18, the
27 complaint must be accompanied by a dated, written request for the requested
28 record. If a court finds that any of these sections have been violated by a public
29 entity, the court may award declaratory relief, an injunction, a writ of prohibition or
30 mandamus, costs, disbursements, and reasonable attorney's fees against the
31 entity. For an intentional or knowing violation of section 44-04-18, 44-04-19,

1 44-04-19.2, 44-04-20, or 44-04-21, the court may also award damages in an
2 amount equal to one thousand dollars or actual damages caused by the violation,
3 whichever is greater. An action under this subsection must be commenced within
4 sixty days of the date the person knew or should have known of the violation or
5 within thirty days of issuance of an attorney general's opinion on the alleged
6 violation, whichever is later. Venue for an action is in the county where the entity
7 has its principal office or, if the entity does not have a principal office within the
8 state, in Burleigh County.

9 3. The remedies provided in this section are not available if a violation of section
10 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 has been corrected before
11 a civil action is filed and no person has been prejudiced or harmed by the delay.
12 An interested person or entity may not file a civil action under this section seeking
13 attorney's fees or damages, or both, until at least three working days after
14 providing notice of the alleged violation to the chief administrative officer for the
15 public entity. This subsection does not apply if the attorney general has found
16 under section 44-04-21.1, on a prior occasion, that the public entity has violated
17 section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21.

18 **SECTION 12.** Section 44-04-21.3 of the North Dakota Century Code is created and
19 enacted as follows:

20 **44-04-21.3. Attorney general referral and criminal penalties.** The attorney general
21 may refer to the appropriate state's attorney any public servant as defined in section 12.1-01-04
22 who has been found in more than one opinion issued pursuant to section 44-04-21.1 to have
23 violated section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21. A public servant as
24 defined in section 12.1-01-04 who knowingly violates section 44-04-18, 44-04-19, 44-04-19.2,
25 44-04-20, or 44-04-21 is guilty of an offense under section 12.1-11-06.