

HEALTH AND SAFETY

CHAPTER 229

HOUSE BILL NO. 1290

(Representative Price)
(Senator J. Lee)

STATE TRAUMA SYSTEM EVALUATION

AN ACT to provide for the state department of health to contract for an evaluation of the state trauma system; to provide for a legislative council report; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STATE DEPARTMENT OF HEALTH - TRAUMA SYSTEM CONSULTATION - REPORT TO LEGISLATIVE COUNCIL.

1. During the 2007-08 interim, the state department of health shall contract with a professional organization to perform an evaluation of the trauma system in the state. In preparing the request for proposal and contract for the evaluation of the trauma system in the state, the department shall request the advice of and receive the consent of an advisory committee consisting of the executive director of the North Dakota emergency medical services association, the executive director of the North Dakota medical association, the president of the North Dakota healthcare association, and the senior policy director of the American heart association, North Dakota, or their designees. The contractor must be a professional organization that is national in scope and which has expertise and experience in evaluating state trauma systems and programs.
2. The evaluation of the state trauma system must include a comprehensive onsite review by a multidisciplinary team, a critical analysis of the current state trauma system, the state trauma system's interrelationship with the state's emergency management system and with homeland security all-hazard planning and program efforts, and recommendations for improvements and enhancements.
3. The state department of health shall provide necessary staffing and assistance to the contractor.
4. Before July 1, 2008, the state health officer shall report to the legislative council on the contractor's findings and recommendations resulting from the state trauma system evaluation and the state department of health's responses and proposed responses to these recommendations.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys from special funds the sum of \$75,000, or so much of the sum as may be necessary, from the health care trust fund and \$25,000, or so much of the sum as may be necessary, from gifts, grants, donations, and other special fund sources to the state department of health for the purpose of contracting for and assisting with an evaluation of the state trauma system under section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 23, 2007

Filed April 24, 2007

CHAPTER 230**HOUSE BILL NO. 1435**

(Representative Price)

(Senator J. Lee)

IMMUNIZATION PROGRAM AND TASK FORCE

AN ACT to provide for an immunization program and immunization task force; to provide for reports to the legislative council; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. STATE DEPARTMENT OF HEALTH IMMUNIZATION PROGRAM.**

1. During the period beginning July 1, 2007, through December 31, 2007, the state department of health shall distribute vaccines purchased under section 3 of this Act to local public health units and other immunization providers for the purpose of continuing the immunization services previously funded through the immunization grant program authorized under section 317 of the federal Public Health Service Act, while transitioning to a provider choice immunization program.
2. During the period beginning January 1, 2008, through June 30, 2009, the state department of health may distribute vaccines purchased under section 3 of this Act to local public health units and other immunization providers for the purpose of continuing the transition to a provider choice immunization program. The department shall distribute the vaccines in accordance with the department's protocol established in consultation with the immunization task force.
3. The state department of health and local public health units shall attempt to access federal and third-party payer funds before using funds from the immunization program. If the funds appropriated to the state department of health for the 2007-09 biennium for the immunization program are insufficient, the state department of health shall request a transfer of spending authority from the state contingencies appropriation.

SECTION 2. STATE DEPARTMENT OF HEALTH - IMMUNIZATION TASK FORCE - REPORTS TO LEGISLATIVE COUNCIL.

1. The state health officer shall appoint an immunization task force to meet during the 2007-08 interim to establish a protocol on how to transition from a universal select immunization program to a provider choice immunization program and to recommend to the state department of health that this protocol be implemented. The protocol must seek to retain the state's high rates of vaccinations using the most cost-effective protocol.
2. The task force must consist of at least seven members, including at least three members representing local public health districts, three members representing private health care providers, and

representatives of the state department of health. The state health officer shall appoint the task force members representing local public health units from a list of names submitted by an organization representing public health administrators. The state health officer shall appoint the task force members representing private health care providers from a list of names submitted by the North Dakota medical association.

3. During the 2007-08 interim, the task force shall provide periodic reports to the legislative council regarding the impact of the immunization program transition on the local public health units. During the 2007-08 interim, the state health officer shall provide periodic reports to the legislative council regarding the fiscal impact of the immunization program transition.

SECTION 3. APPROPRIATION - CONTINGENT APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing vaccines to public health units and other immunization providers, for the biennium beginning July 1, 2007, and ending June 30, 2009. Of the total amount appropriated, \$500,000 is only available if the department of health determines that vaccines need to be purchased after December 31, 2007, pursuant to section 1 of this Act.

Approved April 24, 2007
Filed April 25, 2007

CHAPTER 231**HOUSE BILL NO. 1434**

(Representatives Price, Svedjan)

(Senator J. Lee)

**HEPATITIS EDUCATION AND VACCINATION
PROGRAM**

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to a state department of health viral hepatitis education and vaccination program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Viral hepatitis program - Vaccination - Study.

1. The state department of health shall establish and administer a viral hepatitis program with the goal of distributing to residents of the state who are at an increased risk for exposure to viral hepatitis information that addresses the higher incidence of hepatitis C exposure and infection among these populations, addresses the dangers presented by the disease, and provides contacts for additional information and referrals.
2. The department shall establish a list of classes of individuals by category that are at increased risk for viral hepatitis exposure. The list must be consistent with recommendations developed by the federal centers for disease control. The department shall determine the type of information the department will distribute under the program and the form and manner of distribution.
3. The department shall establish a vaccination and testing program, to be coordinated by the department through local public health units.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the state department of health for the purpose of establishing a viral hepatitis program under section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 9, 2007

Filed April 10, 2007

CHAPTER 232**HOUSE BILL NO. 1471**

(Representatives Ekstrom, Hawken, Nottestad, Potter)
(Senators Erbele, Heckaman)

HUMAN PAPILLOMA VIRUS EDUCATION

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to state department of health programs to educate about the human papilloma virus; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Human papilloma virus - Information. The state department of health shall educate the public about the human papilloma virus and the availability of a human papilloma virus vaccine; promote immunization against the human papilloma virus; and distribute informational materials regarding the human papilloma virus and the human papilloma virus vaccine. The department shall distribute the informational material through relevant department programs and divisions, including breast and cervical cancer control programs; immunization programs; family planning programs; and human immunodeficiency virus and sexually transmitted disease programs. Informational materials distributed must include the recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention; contain information relevant to the target populations of each of the participating programs and divisions distributing the informational materials; and contain information regarding the availability of the vaccine through the vaccines for children program operated by the department under 42 U.S.C. 1396s, and the medical assistance program.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing human papilloma virus education under section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved March 28, 2007
Filed March 28, 2007

CHAPTER 233**HOUSE BILL NO. 1505**
(Representatives Ruby, Bellew, Price)
(Senators Erbele, Warner)**TATTOOING AND BODY PIERCING REGULATION**

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to the regulation of tattooing, body piercing, branding, subdermal implants, and scarification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³² **SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Tattooing, body piercing, branding, subdermal implants, and scarification - Permit - Fee - Adoption of rules.

1. A person may not operate a facility providing tattooing, body piercing, branding, subdermal implant, and scarification services without a permit issued by the department under this section. The holder of a permit shall display the permit in a conspicuous place at the facility for which the permit is issued. A permit issued under this section expires annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the facility and any other information reasonably required by the department for the administration of this section.
2. The health council shall adopt rules to regulate any person that receives compensation for engaging in the practice of tattooing, body piercing, branding, subdermal implants, or scarification. The rules must establish health and safety requirements and limitations with respect to the age of an individual who may receive a tattoo, body piercing, or scarification and may prohibit any practice that the health council deems unsafe or a threat to public health.
3. The fees established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and preparing and sending license renewals. Fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to

¹³² Section 23-01-35 was amended by section 2 of Senate Bill No. 2352, chapter 133.

appropriation by the legislative assembly. The department shall waive all or a portion of the fee for any facility that is subject to local jurisdiction.

Approved April 11, 2007
Filed April 13, 2007

CHAPTER 234**HOUSE BILL NO. 1129**

(Human Services Committee)

(At the request of the State Department of Health)

**ELECTRONIC BIRTH, MARRIAGE, AND DEATH
RECORDS**

AN ACT to create and enact a new section to chapter 23-02.1 of the North Dakota Century Code, relating to electronic birth, marriage, fetal death, and death records and electronic filing and registration for birth, fetal death, and death records; to amend and reenact sections 23-02.1-01, 23-02.1-05, 23-02.1-08, 23-02.1-11, 23-02.1-12, 23-02.1-13, 23-02.1-14, 23-02.1-15, and 23-02.1-16, subsection 1 of section 23-02.1-17, sections 23-02.1-18, 23-02.1-19, and 23-02.1-20, subsection 2 of section 23-02.1-21, section 23-02.1-22, subsection 2 of section 23-02.1-23, sections 23-02.1-25, 23-02.1-26, 23-02.1-27, 23-02.1-28, 23-02.1-29, and 23-02.1-30, subsection 1 of section 23-02.1-32, and sections 23-06-07, 23-06-08, 23-06-09, and 23-06-10 of the North Dakota Century Code, relating to birth, marriage, and death records; to repeal sections 23-02.1-06, 23-02.1-07, 23-02.1-09, and 23-02.1-10 of the North Dakota Century Code, relating to registration districts and local registrars; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-02.1-01 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 who 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 that 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 a person's death.

- ~~2-~~ 7. "Fetal death" or "birth resulting in stillbirth" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; 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.
- ~~3-~~ 8. "Filing" means the presentation of a ~~certificate record~~, report, or other ~~record~~ 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.
- ~~4-~~ 9. "Final disposition" means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.
- ~~5-~~ 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.
- ~~6-~~ 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 persons are committed by law.
- ~~7-~~ 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 a person's death, including the cause and manner of death.
- ~~8-~~ 14. "Physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to chapter 43-17.
- ~~9-~~ 15. "Registration" means the acceptance by the state registrar and incorporation into official records of ~~certificates~~, 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.
16. "Relative" means a person'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.
17. "Subregistrar" means a funeral director or other suitable person from a licensed funeral home who is appointed by the state registrar for the purpose of issuing burial-transit permits.
- ~~40-~~ 18. "System of health statistics tabulation and analysis" includes the tabulation, analysis, and presentation or publication of statistical data derived from health statistics.

- 44- 19. "System of vital records registration" includes the registration, collection, preservation, amendment, and certification of ~~records~~ records 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:

Birth, marriage, fetal death, and death records - Transition to electronic birth registration system and electronic death registration system.

1. Beginning January 1, 2008, all new birth, fetal death, and death certificates must be filed with the state registrar and maintained as birth, fetal death, or death records. The state registrar shall issue certified copies of any birth, fetal death, or death record, or informational copies of death and marriage records, to those persons entitled to the record in accordance with this chapter.
2. A certified copy of a birth, marriage, fetal death, or death record is considered to meet the requirements of any law requiring a birth, marriage, fetal death, or death certificate.
3. All birth, marriage, fetal death, and death certificates created or issued before January 1, 2008, remain legally valid if the certificate was valid under prior law.
4. Any reference to a birth, marriage, fetal death, and death record includes any birth, marriage, fetal death, and death certificate issued before January 1, 2008.
5. Amendments to birth records issued before 2006 and fetal death, or death records issued before 2008 must be made according to the procedures and processes used at the time the original record was created.

SECTION 3. AMENDMENT. Section 23-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-05. Duties of the state registrar.

1. The state registrar shall:
 - a. Direct and supervise the statewide system of vital records and registration and be the primary custodian of said records.
 - b. Direct, supervise, and control the activities of ~~local registrars~~ subregistrars and the activities of other local officials related to the operation of the vital records registration system.
 - c. Prescribe, with the approval of the state department of health, and distribute such forms as required by this chapter and the rules and regulations issued hereunder.

2. The deputy state registrar shall possess the powers of the state registrar during the registrar's absence, delegation, inability to act, or during the time there is a vacancy in the office.

SECTION 4. 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 receive death certificates and issue burial-transit permits for those registration districts counties served by the funeral home the subregistrar is employed by. The subregistrar shall note on each certificate over the subregistrar's signature the date upon which it was filed and shall forward the same to the local registrar file all completed burial-transit permits with the county recorder in the county where the final disposition took place within ~~twenty-one~~ ten days after death the date of interment 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 same penalties for neglect of duties as is the local registrar provided in section 23-02.1-32.

SECTION 5. AMENDMENT. Section 23-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-11. Form of certificates records. The form of the certificates records, reports, and other returns information required by this chapter is subject to the approval of and modification by the state department of health. In order to maintain uniformity in the system of vital records registration and the system of health statistics tabulation and analysis, substantial efforts should be made to ensure that information collected parallels that collected by other primary registration areas.

SECTION 6. AMENDMENT. Section 23-02.1-12 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-12. Date of registration. Each certificate record, report, and other form information required to be filed under this chapter must have entered upon its face the date of registration duly attested.

SECTION 7. AMENDMENT. Section 23-02.1-13 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-13. Birth registration.

1. A certificate of birth record for each live birth that occurs in this state must be filed with the state registrar.
2. When a birth occurs in an institution, the person in charge of the institution or a designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate, and file it with the state registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within six days after the birth must use the state department of health's electronic birth registration system to report the birth, including all personal and medical facts, to the state registrar within five days after the birth.

3. When a birth occurs outside an institution, the ~~certificate~~ required forms must be prepared and filed with the state registrar by one of the following in the indicated order of priority:
 - a. The physician in attendance at or immediately after the birth, or in the absence of such a person;
 - b. Any other person in attendance at or immediately after the birth, or in the absence of such a person; or
 - c. The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.
4. If a man and the mother are or have been married or have attempted to marry each other in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born during the marriage or attempted marriage, or within three hundred days after the termination of cohabitation or after the marriage or attempted marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the man must be entered on the ~~certificate~~ record as the father of the child unless the presumption of paternity has been rebutted by a court decree.
5. If the child is not born during the marriage of the mother, or within three hundred days after a marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the father may not be entered on the birth ~~certificate~~ record unless:
 - a. After the child's birth, the father and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
 - (1) He has acknowledged his paternity of the child in writing filed with the state registrar; or
 - (2) ~~With his consent, he is named as the child's father on the child's birth certificate; or~~
 - (3) He is obligated to support the child under a written voluntary promise or by court order;
 - b. After the child's birth, the child's natural mother and the father voluntarily acknowledge the child's paternity in a writing signed by both and filed with the state registrar; or
 - c. A court or other entity of competent jurisdiction has adjudicated paternity.
6. If, in accordance with subsections 4 and 5, the name of the father of the child is not entered on the ~~certificate~~ of birth record, the child's surname must be shown on the birth ~~certificate~~ record as the current legal surname of the mother at the time of birth unless an affidavit or an

acknowledgment of paternity signed by both parents is received stating the surname to be that of the father.

SECTION 8. AMENDMENT. Section 23-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-14. Infants of unknown parentage - Foundling registration.

1. Whoever assumes custody of a living infant of unknown parentage shall report using the electronic birth registration system or on a form and in the manner prescribed by the state registrar within seven days to the state registrar the following information:
 - a. The date and place of finding.
 - b. Sex, color, or race, and approximate age of child and approximate date of birth.
 - c. Name and address of the persons or institution with whom the child has been placed for care.
 - d. Name given to the child by the custodian.
 - e. Other data required by the state registrar.
2. The place where the child was found must be entered as the place of birth and the date of birth must be determined by approximation.
3. A report registered under this section constitutes the ~~certificate of birth~~ record for the infant.
4. If the child is identified and a ~~certificate of birth~~ record is found or obtained, any report registered under this section must be sealed and filed and may be opened only by order of a court of competent jurisdiction or as provided by regulation.

SECTION 9. AMENDMENT. Section 23-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-15. Delayed registration of birth.

1. When the birth of a person born in this state has not been registered, a ~~certificate~~ record may be filed in accordance with the regulations of the state department of health. Such ~~certificate~~ record must be registered subject to such evidentiary requirements as the state department of health shall prescribe to substantiate the alleged facts of birth.
2. ~~Certificates~~ Records of birth registered one year or more after the date of occurrence must be marked "delayed" and show on their face the date of delayed registration.
3. A summary statement of the evidence submitted in support of the delayed registration must be endorsed on the ~~certificate~~ record.
4. a. When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the

state registrar finds reason to question the validity or adequacy of the ~~certificate record~~ or documentary evidence, the state registrar may not register the delayed ~~certificate record~~ and shall advise the applicant of the reasons for this action. In the event that the deficiencies are not corrected, the state registrar shall advise the applicant of the right of appeal to a court of competent jurisdiction for a judicial determination of the birth facts.

- b. The state department of health may by regulation provide for the dismissal of an application which is more than two years old and is not ~~being actively prosecuted~~ pursued.

SECTION 10. AMENDMENT. Section 23-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-16. Delayed registration of death. When a death occurring in this state has not been registered within the time period specified in section 23-02.1-19, a ~~certificate record~~ may be filed in accordance with regulations of the state department of health.

1. Such ~~certificates records~~ must be registered subject to such evidentiary requirements as the state department of health ~~shall~~ may by regulation prescribe to substantiate the alleged facts of death.
2. ~~Certificates Records~~ of death registered one year or more after the date of occurrence must be marked "delayed" and must show on their face the date of delayed registration.

SECTION 11. AMENDMENT. Subsection 1 of section 23-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

1. For each adoption decreed by any court in this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report must include such facts as are necessary to locate and identify the ~~certificate of birth record~~ for the person adopted; provide information necessary to establish a new ~~certificate of birth record~~ for the person adopted; and must identify the order of adoption and be certified by the clerk of court.

SECTION 12. AMENDMENT. Section 23-02.1-18 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-18. New ~~certificates of birth records~~ following adoption, legitimation, and paternity determination.

1. The state registrar shall establish a new ~~certificate of birth record~~ for a person born in this state when the registrar receives the following:
 - a. An adoption report as provided in section 23-02.1-17 or a certified copy of the decree of adoption together with the information necessary to identify the original ~~certificate of birth record~~ and to establish a new ~~certificate of birth record~~; except that a new ~~certificate of birth record~~ may not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adoptive person.

- b. A request that a new ~~certificate~~ record be established and such evidence as required by rules and regulations proving that such person has been legitimated or that a court of competent jurisdiction has determined the paternity of such person.
2. For a person born in a foreign country whose adoptive parents are residents of the state of North Dakota at the time of the adoption, the state registrar shall prepare a new ~~certificate of birth~~ record:
 - a. In the case of a foreign-born person adopted in North Dakota, upon presentation of a report of adoption as required by section 23-02.1-17.
 - b. In the case of a foreign-born person adopted outside the state of North Dakota or outside the United States, or in the state of North Dakota prior to July 1, 1979, upon presentation of a certified copy of the adoption decree, and:
 - (1) A certified copy of the ~~certificate of birth~~ record of the adopted person; or
 - (2) An affidavit of an adoptive parent setting forth the true or probable date and place of birth and parentage of the adopted person.

Any ~~certificate~~ certification of a birth record issued under this subsection must be in the same form as other ~~certificates~~ certifications of birth records issued in this state except that it must state that it does not purport to be evidence of United States citizenship.

3. When a new ~~certificate of birth~~ record is established, the actual place and date of birth must be shown. The new ~~certificate of birth~~ record must be substituted for the original ~~certificate of birth~~ record:
 - a. Thereafter, the original ~~certificate of birth~~ record and the evidence of adoption, paternity, or legitimation is not subject to inspection except upon order of a court of competent jurisdiction or as provided by rules and regulations.
 - b. Upon receipt of a notice of annulment of adoption, the original ~~certificate of birth~~ record must be restored to its place in the files and the new ~~certificate of birth~~ record and evidence is not subject to inspection except upon order of a court of competent jurisdiction.
4. If no ~~certificate of birth~~ record is on file for the person for whom a new ~~certificate of birth~~ record is to be established under this section, an original ~~certificate of birth~~ record must be filed with the state registrar in accordance with the appropriate rules and regulations promulgated by the state department of health. The new ~~certificate~~ record is also to be prepared on the standard ~~certificate of birth form or the delayed birth certificate form~~ forms in use at the time of the adoption, legitimation, or paternity determination.
5. When a new ~~certificate of birth~~ record is established by the state registrar, all copies of the original ~~certificate of birth~~ record in the custody of any custodian of permanent local records in the state must

be sealed from inspection or forwarded to the state registrar, as the registrar directs.

SECTION 13. AMENDMENT. Section 23-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-19. Death registration.

1. A death certificate for each death which occurs in this state must be filed with the local registrar of the district in which the death occurred within fifteen days after the death and must be registered by the registrar if it has been completed and filed in accordance with this section, provided:
 - a. That if the place of death is unknown, a death certificate must be filed in the registration district in which a dead body is found within fifteen days after the occurrence.
 - b. That if a death occurs on a moving conveyance, a death certificate must be filed in the registration district in which the dead body was first removed from the conveyance.
2. Notwithstanding subsection 1, if the state registrar has implemented an automated system that allows each local registrar to produce certified copies of death certificates in the local registrar's offices within two working days of filing, death certificates must be filed with the state registrar.
3. A death record for each death that occurs in this state must be filed with the state registrar in accordance with the rules and regulations set forth by the state department of health using the electronic death registration system. All registration and issuing of copies of death records will be completed by the state department of health.
2. The funeral director who first assumes custody of a dead body shall file the death certificate. The funeral director shall obtain the personal data facts of death from the next of kin or the best qualified person or source available and must file the facts of death information using the electronic death registration system within three days after assuming custody of the dead body. The funeral director shall obtain the medical certification of cause of death from the person responsible for the medical certification.
4. 3. The medical certification must be completed and signed filed using the electronic death registration system within fifteen days after death by the physician or nurse practitioner in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by the local health officer or coroner.
5. 4. When death occurred without medical attendance or when inquiry is required by the local health officer or coroner, the county coroner shall investigate the cause of death, and shall obtain medical information about the individual from the individual's medical records or last-known physician, and shall complete and sign file the medical certification within fifteen days after taking charge of the case using the electronic death registration system.

- 6- 5. If the cause of death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period, in accordance with rules adopted by the state department of health. The attending physician, nurse practitioner, or coroner shall give the funeral director in custody of the body notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, nurse practitioner, or coroner.
- 7- 6. When a death is presumed to have occurred within this state but the body cannot be located, a death ~~certificate~~ record may be prepared by the state registrar upon receipt of findings of a court of competent jurisdiction, including the ~~personal data facts of death~~ and medical ~~data~~ certification required to complete the death ~~certificate~~ record. The death ~~certificate~~ record must be marked "presumptive" and must show on its face the date of registration and must identify the court and the date of the decree.
- 8- 7. Each death ~~certificate~~ record must include the social security number of the decedent, if the information is available. A social security number included on a death ~~certificate~~ record is confidential and may be disclosed only to a relative or authorized representative of the individual named on the record or by an order of a court of competent jurisdiction.

SECTION 14. AMENDMENT. Section 23-02.1-20 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-20. Fetal death registration.

1. A fetal death ~~certificate~~ record for each fetal death which occurs in this state after a gestation period of twenty completed weeks or more or of less than twenty completed weeks of gestation when provided by rules of the state department of health must be filed with the state registrar.
2. The funeral director who first assumes custody of a fetus shall file the fetal death ~~certificate~~ record. In the absence of such a person, the physician or other person in attendance at or after delivery shall file the ~~certificate of fetal death~~ record. The person filing the ~~certificate of fetal death~~ record shall obtain the ~~personal data facts of death~~ from the next of kin or the best qualified person or source available and must file the facts of death information within fifteen days of the occurrence using the electronic death registration system. The person filing the ~~certificate of fetal death~~ record shall obtain the medical certification of ~~cause of death~~ from the person responsible for the medical certification.
3. The medical certification must be completed and ~~signed~~ filed using the electronic death registration system by the physician or a nurse practitioner in attendance at the delivery within fifteen days after the delivery except when inquiry is required by the local health officer or coroner.
4. When inquiry is required by the local health officer or coroner or in the absence of medical attendance, the county coroner shall investigate the cause of fetal death, and shall obtain medical information about the individual from that individual's medical records or last-known physician and sign file the medical certification within fifteen days after taking charge of the case using the electronic death registration system.

5. If the cause of fetal death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period of time in accordance with rules adopted by the state department of health. The attending physician, nurse practitioner, or coroner shall give the funeral director in custody of the fetus the notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, nurse practitioner, or coroner.
6. The provision for entering the name of the father of the fetus on the fetal death ~~certificate~~ record and the reporting of out-of-wedlock fetal deaths concur exactly with those set forth in section 23-02.1-13.

SECTION 15. AMENDMENT. Subsection 2 of section 23-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. The burial-transit permits must be issued by the state registrar or ~~the local registrar or a subregistrar of the district where the certificate of death or fetal death will~~ 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.

SECTION 16. 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 ~~certificates~~ records, fetal death ~~certificates~~ records, medical certification of ~~cause of death~~, and for the obtaining of burial-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 permit under section 23-02.1-21 prior to the filing of a ~~certificate~~ 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 ~~certificates~~ records be filed prior to the issuance of the permit would result in undue hardship.

SECTION 17. AMENDMENT. Subsection 2 of section 23-02.1-23 of the North Dakota Century Code is amended and reenacted as follows:

2. The officer who issues the marriage license shall prepare the ~~certificate~~ record on the form prescribed and furnished by the state registrar upon the basis of information obtained from the parties to be married, who shall attest to information by their signatures.

SECTION 18. AMENDMENT. Section 23-02.1-25 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-25. Correction and amendment of vital records.

1. A ~~certificate or~~ record registered under this chapter may be amended only in accordance with this chapter and regulations thereunder adopted by the state department of health to protect the integrity and accuracy of vital records.
2. A ~~certificate record~~ that is amended under this section must be marked "amended" except as provided in subsection 4. The date of amendment and a summary description of the evidence submitted in support of the amendment must be endorsed on or made a part of the record. The state department of health shall prescribe by regulation the conditions under which additions or minor corrections may be made to birth ~~certificates records~~ within one year after the date of birth without the ~~certificate record~~ being considered as amended.
3. Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person or the person's parent, guardian, or legal representative, the state registrar shall amend the ~~certificate record~~ to reflect the new name.
4. Upon receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents and upon request, the state registrar shall amend a ~~certificate record~~ of birth to show such paternity if paternity is not shown on the ~~certificate record~~. Upon request of the parents, the surname of the child must be changed on the appropriate ~~certificate record~~ to that of the father. Such ~~certificates record~~ may not be marked as "amended". The provisions of this subsection apply also in their entirety to ~~certificates records~~ of fetal death.

SECTION 19. AMENDMENT. Section 23-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-26. Reproduction of records. To preserve original documents, the state registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of original records and files in the state registrar's office. ~~Such~~ These reproductions when certified by the state registrar must be accepted as the original record.

SECTION 20. AMENDMENT. Section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-27. Disclosure of records. Birth, death and fetal death records, filings, data, or other information related to birth, death, and fetal death records are confidential and may not be disclosed except as authorized under this chapter. The state registrar, ~~and local registrars, may supervise and regulate physical~~ shall restrict access to all vital records to protect vital records from loss, mutilation, or destruction and to prevent ~~improper~~ disclosure of the information contained in these records ~~that are confidential.~~ Information relating to the birth or fetal death of a child to a woman who was not married to the child's father when the child was conceived or born may be disclosed only to the child's guardian, to the individual to whom the record relates if that individual is at least eighteen years old, to the parent of the child, or upon order of a court of competent jurisdiction. Information in vital records indicating cause of death may not be disclosed except to a relative or personal representative of the deceased, to the attorney or the agent of a relative or personal representative of the

deceased, to the child fatality review panel, or upon order of a court of competent jurisdiction. An individual's social security number contained in vital records may not be disclosed except to the individual to whom it pertains, that individual's lawful agent or guardian, or by order of a court. Only a certified copy of a certificate or record may be provided to the public except as authorized under this chapter.

1. A certified copy of a birth record may be issued to the individual named on the record if that individual is at least sixteen years old, to a parent named on the record, to an authorized representative, or by the order of a court of competent jurisdiction. If the individual named on a birth record is deceased, a certified copy of that record may also be issued to a relative. If the date of birth on any birth record is more than one hundred years old, that record is an open record and a certified copy may be issued to anyone, except that adoption records remain confidential.
2. A certified copy of a death record may be issued to a relative, an authorized representative, the child fatality review board, or a funeral director reporting the facts of death, or by the order of a court of competent jurisdiction and may include the cause of death and the social security number. A certified copy of a death record that includes the facts of death and the social security number may be issued to any person that may obtain a certified copy of a death record or to any licensed attorney who requires the copy for a bona fide legal determination. A certified informational copy of a death record may be issued to the general public, but the copy may not contain the cause of death or the social security number.
3. A certified copy of a fetal death record may be issued to a parent named on the record, an authorized representative, or by the order of a court of competent jurisdiction. A person authorized to receive a certified copy of a fetal death record may request the certified copy be issued in the form of a certification of birth resulting in stillbirth.
4. A noncertified informational copy of a marriage record may be issued to the general public.
5. Any individual authorized to receive a certified copy of any specific record may grant another individual the same authority by completing a written authorization on a form prescribed by the state department of health.
6. The state department of health may grant limited access to birth and death information to the department of human services necessary for the purpose of completing its official duties.

SECTION 21. AMENDMENT. Section 23-02.1-28 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-28. Copies of data from vital records. In accordance with section 23-02.1-27 and the regulations adopted pursuant thereto:

1. The state registrar shall, upon request of a person entitled to a copy under section 23-02.1-27, issue a certified copy of any ~~certificate or record or part of a record~~ in the registrar's custody ~~or a part thereof~~. Each copy issued must show the date of registration; and copies issued

from records marked "delayed", "amended", or "court order" must be similarly marked and show the effective date of filing.

2. A certified copy of a ~~certificate record~~ or any part ~~thereof of the record~~ issued in accordance with subsection 1 must be considered evidence of the facts of birth stated ~~therein in the record~~, provided that the evidentiary value of a ~~certificate or record~~ filed more than one year after the event, or a record which has been amended, must be determined by the judicial or administrative body or official before whom the ~~certificate record~~ is offered as evidence.
3. Data or copies may be furnished for statistical purposes to federal, state, local, or other public or private agencies, including the federal agency responsible for national vital statistics, upon such terms and conditions as may be prescribed by the state department of health through rules and regulations adopted pursuant to this chapter.
4. No person may prepare or issue any certificate ~~or record~~ which purports to be an original, certified copy, or copy of a certificate ~~or record~~ of birth, death, or fetal death, except as provided in this chapter, or regulations adopted ~~hereunder~~ under this chapter.
5. A certified copy may not disclose an individual's social security number unless the copy is being provided to the individual to whom it pertains, ~~that individual's lawful agent or guardian a relative or authorized representative~~, or by order of a court of competent jurisdiction.

SECTION 22. AMENDMENT. Section 23-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-29. Fees.

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

The fee for each additional copy of the same document, requested at the same time, may not exceed two dollars.

2. Except as otherwise provided in subsection 3, fees collected under this section by the state registrar must be deposited in the general fund of this state, according to procedures established by the state treasurer. ~~When a local registrar of any county in the state has been duly authorized, by the state registrar, to prepare and issue certified copies of death certificates or fetal death certificates, said local registrar is entitled to charge a fee, not to exceed five dollars, for the first certified copy, and not to exceed two dollars for each additional certified copy of the same document requested at the same time. Fees collected under this section by local registrars must be deposited to the general fund of the respective counties.~~
3. The state department of health shall charge a fee, in addition to those fees authorized by subsection 1, in the amount of two dollars for the issuance of each certified copy of a birth ~~certificate record~~. This additional fee must be paid to the state registrar prior to the issuance of each certified copy of a birth ~~certificate record~~. The state registrar shall quarterly pay the additional fees collected pursuant to this subsection into the children's trust fund created by section 50-27-01.

SECTION 23. AMENDMENT. Section 23-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-30. Persons required to keep records.

1. Every person in charge of an institution as defined in this chapter shall keep a record of personal particulars and data concerning each person admitted or confined to such institution. This record must include ~~such~~ all information as required by the standard ~~certificate record~~ of birth, death, and fetal death forms issued under the provisions of this chapter. The record must be made at the time of admission from information provided by such person, but when it cannot be obtained from ~~said that~~ person, the same information must be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information must be a part of the record.
2. When a dead body or fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body is released, date of removal from the institution, or if finally disposed of by the institution, the date, place, and manner of disposition must be recorded.
3. A funeral director, embalmer, or other person who removed from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any ~~certificate record~~ or other form required by this chapter, shall keep a record which must identify the body, and ~~such the~~ information pertaining to receipt, removal, and delivery of ~~such the~~ body as may be prescribed in regulations adopted by the state department of health.
4. Records maintained under this section must be made available to the state registrar or the registrar's representative for inspection upon demand.

5. On or before the fifth day of each month, each funeral director, embalmer, or person acting as such in this state shall report to the state registrar, on forms provided for this purpose, information required by the state registrar regarding each dead body or fetus handled by such person during the preceding calendar month.

SECTION 24. AMENDMENT. Subsection 1 of section 23-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Any person who willfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this chapter, or in application for an amendment thereof, or who willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof;
- b. Any person who, without lawful authority and with the intent to deceive, makes, alters, or mutilates any report, record, or certificate required to be filed under this chapter or a certified copy of ~~such a~~ report, record, or certificate;
- c. Any person who willfully and knowingly uses or attempts to use or to furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy thereof so made, altered, amended, or mutilated;
- d. Any person who, with the intention to deceive, willfully uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person; ~~or~~
- e. Any person who willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person to whom the record of birth relates; or
- f. Any person who knowingly prepares, delivers, or uses a fraudulent or forged copy of a vital record;

is guilty of a class A ~~misdemeanor~~ C felony.

SECTION 25. AMENDMENT. Section 23-06-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06-07. Regulation of burial - Issuance of burial-transit permit regulated. The body of any person whose death occurs in this state may not be interred, deposited in a vault or tomb, cremated, or otherwise disposed of, until a burial-transit permit has been properly issued by ~~the registrar of vital statistics of the registration district in which the death occurred~~ a subregistrar. A burial-transit permit may not be issued by any ~~registrar~~ 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 ~~registrar shall call attention to the defect and withhold issuing~~ subregistrar may not issue the permit until ~~the same~~ it is corrected or completed. In the case of any death outside of this state, a burial-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 ~~local registrar~~ ~~subregistrar~~. If the death occurred from some disease that is held to be communicable by the state department of health, the ~~registrar~~ ~~subregistrar~~ shall refuse to ~~grant~~ 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 26. AMENDMENT. Section 23-06-08 of the North Dakota Century Code is amended and reenacted as follows:

23-06-08. Burial-transit permit - Contents. The burial-transit permit must be on the form prescribed by the state registrar of vital statistics, must be signed by the ~~registrar~~ ~~subregistrar~~ issuing it, and may be limited to a statement by the ~~local registrar~~ ~~subregistrar~~ showing:

1. That a satisfactory ~~certificate of death~~ record has been filed with the ~~local~~ state registrar as required by law.
2. That permission is granted to inter, remove, or otherwise dispose of the body of the deceased.
3. The name, age, sex, and the cause of death of the deceased and any other necessary details.

SECTION 27. AMENDMENT. Section 23-06-09 of the North Dakota Century Code is amended and reenacted as follows:

23-06-09. Disposition of burial-transit permit. The undertaker, or person acting as undertaker, shall secure the burial-transit permit from the ~~local registrar~~ ~~subregistrar~~. The undertaker, or person acting as undertaker, shall deliver such permit to the sexton or person in charge of the place of burial before interring the body 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 as authority for the interment 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 28. 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 permit - Record of burials. Each sexton or person in charge of the burial ground shall endorse the date of interment upon the burial-transit permit over the person's signature, and return the burial-transit permit to the subregistrar. The ~~sexton or person in charge of the burial ground~~ ~~subregistrar~~ shall return file all completed permits, so endorsed, ~~to~~ with the local registrar of that district 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, the place of death, the date of burial, and the name and address of the undertaker or funeral director. ~~The sexton is not required to record the cause of death or the color of the deceased.~~ 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 permit to the ~~local registrar~~ ~~subregistrar~~.

SECTION 29. REPEAL. Sections 23-02.1-06, 23-02.1-07, 23-02.1-09, and 23-02.1-10 of the North Dakota Century Code are repealed.

SECTION 30. EFFECTIVE DATE. This Act becomes effective on January 1, 2008.

Approved April 10, 2007
Filed April 11, 2007

CHAPTER 235**SENATE BILL NO. 2308**

(Senators J. Lee, Warner)
(Representatives Kreidt, Price)

HEALTH CARE DIRECTIVE PROVISIONS

AN ACT to amend and reenact sections 23-06.5-03 and 23-06.5-05.1 of the North Dakota Century Code, relating to provisions of a health care directive.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06.5-03 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-03. Health care directive.

1. A principal may execute a health care directive. A health care directive may include one or more health care instructions to health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a power of attorney to appoint an agent to make health care decisions for the principal when the principal lacks the capacity to make health care decisions, unless otherwise specified in the health care directive. Subject to the provisions of this chapter and any express limitations set forth by the principal in the health care directive, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.
2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:
 - a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the principal's health care directive; or
 - b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.
3. A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity.
4. Notwithstanding subsection 3, the principal may authorize in a health care directive that the agent make health care decisions for the principal even though the principal retains capacity to make health care decisions. In that case, the health care directive is in effect as stated in the health care directive under any conditions the principal may impose. The principal's authorization under this subsection may be revoked in

the same manner as a health care directive may be revoked under section 23-06.5-07.

5. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.
6. Nothing in this chapter permits an agent to consent to admission to a mental health facility or state institution for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

¹³³ **SECTION 2. AMENDMENT.** Section 23-06.5-05.1 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-05.1. Suggested health care directive form. A health care directive may include provisions consistent with this chapter, including:

1. The designation of one or more alternate agents to act if the named agent is not reasonably available to serve;
2. Directions to joint agents regarding the process or standards by which the agents are to reach a health care decision for the principal, and a statement whether joint agents may act independently of one another;
3. Limitations, if any, on the right of the agent or any alternate agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;
4. Limitations, if any, on the nomination of the agent as guardian under chapter 30.1-28;
5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter 23-06.2 or an amendment to, revocation of, or refusal to make an anatomical gift;
6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on the appointment of an agent; ~~and~~
7. Health care instructions regarding artificially administered nutrition or hydration; and
8. The designation of an agent authorized to make health care decisions for the principal even though the principal retains the capacity to make health care decisions.

Approved May 4, 2007
Filed May 4, 2007

¹³³ Section 23-06.5-05.1 was also amended by section 2 of Senate Bill No. 2163, chapter 237.

CHAPTER 236**SENATE BILL NO. 2212**

(Senators J. Lee, Dever)
(Representatives Pietsch, Price)

HEALTH CARE DIRECTIVES

AN ACT to amend and reenact sections 23-06.5-10 and 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 23-06.5-10 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-10. Freedom from influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a health care directive as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a health care directive.
2. ~~The appointment of an agent is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the district court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the appointment to the principal or unless the principal acknowledges in writing that the principal has read a written explanation of the nature and effect of the appointment.~~
3. ~~The appointment of an agent is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice in this state signs a statement that the person has explained the nature and effect of the appointment to the principal or unless the principal acknowledges in writing that the principal has read a written explanation of the nature and effect of the appointment.~~

SECTION 2. 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 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:

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):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

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: _____

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

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.

(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)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO RESIDENT OF LONG-TERM CARE FACILITY. (Only necessary if person is a resident of long-term care facility and Part I is completed appointing an agent. This statement does not need to be completed if the resident has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to _____ (name of principal) who signed this document and who is a resident of _____ (name and city of facility). I am (check one of the following):

A recognized member of the clergy.

An attorney licensed to practice in North Dakota.

A person designated by the district court for the county in which the above-named facility is located.

A person designated by the North Dakota department of human services.

Dated on _____, 20____. _____(Signature)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO HOSPITAL PATIENT OR PERSON BEING ADMITTED TO HOSPITAL. (Only necessary if person is a patient in a hospital or is being admitted to a hospital and Part I is completed appointing an agent. This statement does not need to be completed if the patient or person being admitted has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to _____ (name of principal) who signed this document and who is a patient or is being admitted as a patient of _____ (name and city of hospital). I am (check one of the following):

An attorney licensed to practice in North Dakota.

A person designated by the hospital to explain the health care directive.

Dated on _____, 20____. _____(Signature)

Approved May 4, 2007

Filed May 4, 2007

CHAPTER 237**SENATE BILL NO. 2163**

(Senators Kilzer, J. Lee)

(Representatives Carlisle, Delmore, Klemin, Porter)

UNIFORM ANATOMICAL GIFT ACT

AN ACT to create and enact chapter 23-06.6 of the North Dakota Century Code, relating to the revised Uniform Anatomical Gift Act; to amend and reenact section 23-06-01.2, subsection 5 of section 23-06.5-05.1, subsection 1 of section 39-06-03.1, subsection 2 of section 39-06-07, and subsection 1 of section 39-06-14 of the North Dakota Century Code, relating to cross-references to the Uniform Anatomical Gift Act; to repeal chapter 23-06.2 of the North Dakota Century Code, relating to the Uniform Anatomical Gift Act; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-01.2 of the North Dakota Century Code is amended and reenacted as follows:

23-06-01.2. Application of other laws. Sections 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, 23-06-16, 23-06-17, and 23-06-19 do not apply to any body or parts thereof disposed of after death pursuant to the authorization for disposal of a body or parts thereof provided in and for the purposes of chapter ~~23-06.2~~ 23-06.6.

¹³⁴ **SECTION 2. AMENDMENT.** Subsection 5 of section 23-06.5-05.1 of the North Dakota Century Code is amended and reenacted as follows:

5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter ~~23-06.2~~ 23-06.6 or an amendment to, revocation of, or refusal to make an anatomical gift;

SECTION 3. Chapter 23-06.6 of the North Dakota Century Code is created and enacted as follows:

23-06.6-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Adult" means an individual who is eighteen years of age or older.
2. "Agent" means an individual:
 - a. Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

¹³⁴ Section 23-06.5-05.1 was also amended by section 2 of Senate Bill No. 2308, chapter 235.

- b. Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.
- 3. "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.
- 4. "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.
- 5. "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 23-06.6-10.
- 6. "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.
- 7. "Donor" means an individual whose body or part is the subject of an anatomical gift.
- 8. "Donor registry" means a data base that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- 9. "Driver's license" means a license or permit issued by the department of transportation to operate a vehicle regardless of whether conditions are attached to the license or permit.
- 10. "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.
- 11. "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.
- 12. "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.
- 13. "Identification card" means an identification card issued by the department of transportation.
- 14. "Know" means to have actual knowledge.
- 15. "Minor" means an individual who is under eighteen years of age.
- 16. "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

17. "Parent" means a parent whose parental rights have not been terminated.
18. "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.
19. "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.
20. "Procurement organization" means an eye bank, an organ procurement organization, or a tissue bank.
21. "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.
22. "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.
23. "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.
24. "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.
25. "Refusal" means an intention not to make an anatomical gift of an individual's body or part expressed by the individual in accordance with section 23-06.6-06 or which expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.
26. "Sign" means, with the 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.
27. "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.
28. "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.
29. "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

30. "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

23-06.6-02. Applicability. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

23-06.6-03. Who may make an anatomical gift before donor's death. Subject to section 23-06.6-07, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 23-06.6-04 by:

1. The donor, if the donor is an adult or if the donor is a minor and is:
 - a. Emancipated; or
 - b. Authorized under state law to apply for a driver's license because the donor is at least fourteen years of age;
2. An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
3. A parent of the donor, if the donor is an unemancipated minor; or
4. The donor's guardian.

23-06.6-04. Manner of making anatomical gift before donor's death.

1. A donor may make an anatomical gift:
 - a. By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;
 - b. In a will;
 - c. During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
 - d. As provided in subsection 2.
2. A donor or other person authorized to make an anatomical gift under section 23-06.6-03 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:
 - a. Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

- b. State that it has been signed and witnessed as provided in subdivision a.
- 3. Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.
- 4. An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

23-06.6-05. Amending or revoking anatomical gift before donor's death.

- 1. Subject to section 23-06.6-07, a donor or other person authorized to make an anatomical gift under section 23-06.6-03 may amend or revoke an anatomical gift by:
 - a. A record signed by:
 - (1) The donor;
 - (2) The other person; or
 - (3) Subject to subsection 2, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or
 - b. A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.
- 2. A record signed pursuant to paragraph 3 of subdivision a of subsection 1 must:
 - a. Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
 - b. State that it has been signed and witnessed as provided in subdivision a.
- 3. Subject to section 23-06.6-07, a donor or other person authorized to make an anatomical gift under section 23-06.6-03 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.
- 4. A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
- 5. A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection 1.

23-06.6-06. Refusal to make anatomical gift - Effect of refusal.

1. An individual may refuse to make an anatomical gift of the individual's body or part by:
 - a. A record signed by:
 - (1) The individual; or
 - (2) Subject to subsection 2, another individual acting at the direction of the individual if the individual is physically unable to sign;
 - b. The individual's will regardless of whether the will is admitted to probate or invalidated after the individual's death; or
 - c. Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
2. A record signed pursuant to paragraph 2 of subdivision a of subsection 1 must:
 - a. Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and
 - b. State that it has been signed and witnessed as provided in subdivision a.
3. An individual who has made a refusal may amend or revoke the refusal:
 - a. In the manner provided in subsection 1 for making a refusal;
 - b. By subsequently making an anatomical gift pursuant to section 23-06.6-04 which is inconsistent with the refusal; or
 - c. By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.
4. Except as otherwise provided in subsection 8 of section 23-06.6-07, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

23-06.6-07. Preclusive effect of anatomical gift, amendment, or revocation.

1. Except as otherwise provided in subsection 7 and subject to subsection 6, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section

23-06.6-04 or an amendment to an anatomical gift of the donor's body or part under section 23-06.6-05.

2. A donor's revocation of an anatomical gift of the donor's body or part under section 23-06.6-05 is not a refusal and does not bar another person specified in section 23-06.6-03 or 23-06.6-08 from making an anatomical gift of the donor's body or part under section 23-06.6-04 or 23-06.6-09.
3. If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 23-06.6-04 or an amendment to an anatomical gift of the donor's body or part under section 23-06.6-05, another person may not make, amend, or revoke the gift of the donor's body or part under section 23-06.6-09.
4. A revocation of an anatomical gift of a donor's body or part under section 23-06.6-05 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 23-06.6-04 or 23-06.6-09.
5. In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 23-06.6-03, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.
6. In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 23-06.6-03, an anatomical gift of a part for one or more of the purposes set forth in section 23-06.6-03 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 23-06.6-04 or 23-06.6-09.
7. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.
8. If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

23-06.6-08. Who may make anatomical gift of decedent's body or part.

1. Subject to subsections 2 and 3 and unless barred by section 23-06.6-06 or 23-06.6-07, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:
 - a. An agent of the decedent at the time of death who could have made an anatomical gift under subsection 2 of section 23-06.6-03 immediately before the decedent's death;
 - b. The spouse of the decedent;
 - c. Adult children of the decedent;

- d. Parents of the decedent;
 - e. Adult siblings of the decedent;
 - f. Adult grandchildren of the decedent;
 - g. Grandparents of the decedent;
 - h. An adult who exhibited special care and concern for the decedent;
 - i. The persons who were acting as the guardians of the decedent at the time of death; and
 - j. Any other person having the authority to dispose of the decedent's body.
2. If there is more than one member of a class listed in subdivision a, c, d, e, f, g, or i of subsection 1 entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 23-06.6-10 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.
 3. A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection 1 is reasonably available to make or to object to the making of an anatomical gift.

23-06.6-09. Manner of making, amending, or revoking anatomical gift of decedent's body or part.

1. A person authorized to make an anatomical gift under section 23-06.6-08 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.
2. Subject to subsection 3, an anatomical gift by a person authorized under section 23-06.6-08 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 23-06.6-08 may be:
 - a. Amended only if a majority of the reasonably available members agree to the amending of the gift; or
 - b. Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.
3. A revocation under subsection 2 is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

23-06.6-10. Persons that may receive anatomical gift - Purpose of anatomical gift.

1. An anatomical gift may be made to the following persons named in the document of gift:
 - a. A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person for research or education;
 - b. Subject to subsection 2, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;
 - c. An eye bank or tissue bank.
2. If an anatomical gift to an individual under subdivision b of subsection 1 cannot be transplanted into the individual, the part passes in accordance with subsection 7 in the absence of an express, contrary indication by the person making the anatomical gift.
3. If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection 1 but identifies the purpose for which an anatomical gift may be used, the following rules apply:
 - a. If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.
 - b. If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.
 - c. If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.
 - d. If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.
4. For the purpose of subsection 3, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.
5. If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection 1 and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection 7.
6. If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be

used only for transplantation or therapy, and the gift passes in accordance with subsection 7.

7. For purposes of subsections 2, 5, and 6 the following rules apply:
 - a. If the part is an eye, the gift passes to the appropriate eye bank.
 - b. If the part is tissue, the gift passes to the appropriate tissue bank.
 - c. If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.
8. An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision b of subsection 1, passes to the organ procurement organization as custodian of the organ.
9. If an anatomical gift does not pass pursuant to subsection 1, 2, 3, 4, 5, 6, 7, or 8 or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.
10. A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 23-06.6-04 or 23-06.6-09 or if the person knows that the decedent made a refusal under section 23-06.6-06 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.
11. Except as otherwise provided in subdivision b of subsection 1, nothing in this chapter affects the allocation of organs for transplantation or therapy.

23-06.6-11. Search and notification.

1. The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:
 - a. A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and
 - b. If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.
2. If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision a of subsection 1 and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

3. A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

23-06.6-12. Delivery of document of gift not required - Right to examine.

1. A document of gift need not be delivered during the donor's lifetime to be effective.
2. Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 23-06.6-10.

23-06.6-13. Rights and duties of procurement organization and others.

1. When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department of transportation and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.
2. A procurement organization must be allowed reasonable access to information in the records of the department of transportation to ascertain whether an individual at or near death is a donor.
3. When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.
4. Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 23-06.6-10 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.
5. Unless prohibited by law other than this chapter, an examination under subsection 3 or 4 may include an examination of all medical and dental records of the donor or prospective donor.
6. Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.
7. Upon referral by a hospital under subsection 1, a procurement organization shall make a reasonable search for any person listed in

section 23-06.6-08 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

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, 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, or cremation, shall cause the part to be removed without unnecessary mutilation.
9. Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.
10. A physician or technician may remove a donated part from the body of a donor which the physician or technician is qualified to remove.

23-06.6-14. Coordination of procurement and use. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

23-06.6-15. Sale or purchase of parts prohibited - Penalty.

1. Except as otherwise provided in subsection 2, a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a class B misdemeanor.
2. A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

23-06.6-16. Other prohibited act - Penalty. A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a class B misdemeanor.

23-06.6-17. Immunity.

1. A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.
2. Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

3. In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in subdivision b, c, d, e, f, g, or h of subsection 1 of section 23-06.6-08 relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

23-06.6-18. Law governing validity - Choice of law as to execution of document of gift - Presumption of validity.

1. A document of gift is valid if executed in accordance with:
 - a. This chapter;
 - b. The laws of the state or country where the document of gift was executed; or
 - c. The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.
2. If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.
3. A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

23-06.6-19. Donor registry.

1. The state department of health may establish or contract for the establishment of a donor registry.
2. The department of transportation shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.
3. A donor registry must:
 - a. Allow a donor or other person authorized under section 23-06.6-04 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;
 - b. Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and
 - c. Be accessible for purposes of subdivisions a and b seven days a week on a twenty-four-hour basis.
4. Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express

consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

5. This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections 3 and 4.

23-06.6-20. Effect of anatomical gift on advance health care directive.

1. In this section:
 - a. "Advance health care directive" means a health care directive under chapter 23-06.5, a power of attorney for health care, or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.
 - b. "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.
 - c. "Health care decision" means any decision made regarding the health care of the prospective donor.
2. If a prospective donor has a declaration or advance health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor, unless the declaration or advance health care directive expressly provides to the contrary.

23-06.6-21. Cooperation between coroner or medical examiner and a procurement organization.

1. A coroner or medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.
2. If a coroner or medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner or medical examiner and a post-mortem examination is going to be performed, unless the coroner or medical examiner denies recovery in accordance with section 23-06.6-22, the coroner or medical examiner or designee of the coroner or medical examiner shall conduct a post-mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.
3. A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner

from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or medical examiner.

23-06.6-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner or medical examiner.

1. Upon request of a procurement organization, a coroner or medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner or medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or medical examiner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the coroner or medical examiner only if relevant to transplantation or therapy.
2. The coroner or medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner or medical examiner which the coroner or medical examiner determines may be relevant to the investigation.
3. A person that has any information requested by a coroner or medical examiner pursuant to subsection 2 shall provide that information as expeditiously as possible to allow the coroner or medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.
4. If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner or medical examiner and a post-mortem examination is not required, or the coroner or medical examiner determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner or medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.
5. If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or medical examiner has been or might be made, but the coroner or medical examiner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the coroner or medical examiner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. The procurement organization shall provide the coroner or medical examiner with all information the organization has which could relate to the cause or manner of the decedent's death. After consultation, the coroner or medical examiner may allow the recovery.

6. Following the consultation under subsection 5, in the absence of mutually agreed-upon protocols to resolve conflict between the coroner or medical examiner and the procurement organization, if the coroner or medical examiner intends to deny recovery of an organ for transplantation, the coroner or medical examiner or designee of the coroner or medical examiner, at the request of the procurement organization, shall attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part. During the removal procedure, the coroner or medical examiner or designee or the coroner or medical examiner may allow recovery by the procurement organization to proceed, or, if the coroner or medical examiner or designee of the coroner or medical examiner reasonably believes that the part may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.
7. If the coroner or medical examiner or designee or the coroner or medical examiner denies recovery under subsection 6, the coroner or medical examiner or designee of the coroner or medical examiner shall:
 - a. Explain in a record the specific reasons for not allowing recovery of the part;
 - b. Include the specific reasons in the records of the coroner or medical examiner; and
 - c. Provide a record with the specific reasons to the procurement organization.
8. If the coroner or medical examiner or designee of the coroner or medical examiner allows recovery of a part under subsection 4, 5, or 6, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner or medical examiner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.
9. If a coroner or medical examiner or designee of a coroner or medical examiner is required to be present at a removal procedure under subsection 6, upon request the procurement organization requesting the recovery of the part shall reimburse the coroner or medical examiner or designee of the coroner or medical examiner for the additional costs incurred in complying with subsection 6.

23-06.6-23. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.], but does not modify, limit or supersede section 101(a) of that Act [15 U.S.C. 7001], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

¹³⁵ **SECTION 4. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. The application must provide for the voluntary identification of the applicant as a donor under the provisions of chapter ~~23-06.2~~ 23-06.6. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter ~~23-06.2~~ 23-06.6. If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age.

SECTION 5. AMENDMENT. Subsection 2 of section 39-06-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Every application must state the full name, date of birth, sex, social security number, residence and mailing address, and briefly describe the applicant. In signing the application the applicant is deemed to have certified that all information contained on the application is true and correct. The application must be accompanied by the proper fee. The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter ~~23-06.2~~ 23-06.6. The application must contain such other information as the director may require.

SECTION 6. AMENDMENT. Subsection 1 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter ~~23-06.2~~ 23-06.6. No license is valid until it has been signed by the licensee with the

¹³⁵ Section 39-06-03.1 was also amended by section 1 of House Bill No. 1227, chapter 322, and section 1 of Senate Bill No. 2112, chapter 323.

licensee's usual signature. The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter ~~23-06.2~~ 23-06.6. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

SECTION 7. REPEAL. Chapter 23-06.2 of the North Dakota Century Code is repealed.

Approved April 9, 2007
Filed April 10, 2007

CHAPTER 238**HOUSE BILL NO. 1136**

(Human Services Committee)

(At the request of the State Department of Health)

IMMUNIZATION REQUIREMENTS AND WAIVERS

AN ACT to create and enact a new subsection to section 23-07-17.1 of the North Dakota Century Code, relating to circumstances when children's immunization requirements may be waived; and to amend and reenact subsection 1 of section 23-07-17.1 of the North Dakota Century Code, relating to children's required immunizations for attending school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁶ **SECTION 1. AMENDMENT.** Subsection 1 of section 23-07-17.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, head start program, or nursery school operating in this state or be supervised through home-based instruction unless the child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health that the child has received age appropriate immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, hepatitis B, haemophilus influenza type b (Hib), varicella (chickenpox), ~~and~~ poliomyelitis, pneumococcal disease, meningococcal disease, rotovirus, and hepatitis A. In the case of a child receiving home-based instruction, the child's parent or legal guardian shall file the certification with the public school district in which the child resides.

¹³⁷ **SECTION 2.** A new subsection to section 23-07-17.1 of the North Dakota Century Code is created and enacted as follows:

When, in the opinion of the state health officer, extenuating circumstances make it difficult or impossible to comply with immunization requirements, the state health officer may authorize children who are not immunized to be admitted to an institution listed in subsection 1 until the state health officer determines that the extenuating circumstances no longer exist. Extenuating circumstances include a shortage of vaccine and other temporary circumstances.

Approved April 12, 2007

Filed April 13, 2007

¹³⁶ Section 23-07-17.1 was also amended by section 2 of House Bill No. 1136, chapter 238.

¹³⁷ Section 23-07-17.1 was also amended by section 1 of House Bill No. 1136, chapter 238.

CHAPTER 239**SENATE BILL NO. 2358**

(Senators Nelson, Fiebiger, Lyson)
(Representatives Gruchalla, Koppelman)

HIV TESTING FOR SEXUAL OFFENDERS

AN ACT to amend and reenact section 23-07.7-01 of the North Dakota Century Code, relating to court-ordered testing of a sexual offender for human immunodeficiency virus; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁸ **SECTION 1. AMENDMENT.** Section 23-07.7-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.7-01. Court-ordered sexual offense medical testing.

1. The court may order any defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile offender has any sexually transmitted diseases, including a test for infection with the human immunodeficiency virus or any other identified positive agent of acquired immunodeficiency syndrome. The court may not order a defendant charged with violating section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 or an alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 to undergo the testing authorized by this section. The court may order the testing only if the court receives a petition from the alleged victim of the offense or from the prosecuting attorney if the alleged victim has made a written request to the prosecuting attorney to petition the court for an order authorized under this section. On receipt of a petition, the court shall determine, without a hearing, if probable cause exists to believe that a possible transfer of a sexually transmitted disease or human immunodeficiency virus took place between the defendant or alleged juvenile offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician.
2. If a defendant is charged with a sexual offense under chapter 12.1-20 in which the alleged victim is compelled by force or threat to engage in sexual activity or sexual contact, the prosecuting attorney shall inform the alleged victim that the alleged victim may request that a test for

¹³⁸ Section 23-07.7-01 was also amended by section 3 of Senate Bill No. 2138, chapter 131.

infection with the human immunodeficiency virus or any other identified agent of acquired immunodeficiency syndrome be administered to the defendant. If the alleged victim requests that the test be administered, the prosecuting attorney shall notify the court. The court shall order that the test be administered within forty-eight hours after the date the complaint or information is filed or after the defendant's initial appearance.

3. ~~The~~ If a test is ordered under subsection 1 or 2, the physicians for the defendant or alleged juvenile offender and requesting alleged victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

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

Approved April 26, 2007
Filed April 27, 2007

CHAPTER 240**SENATE BILL NO. 2109**

(Human Services Committee)

(At the request of the Department of Human Services)

BASIC AND LONG-TERM CARE BED MORATORIUM

AN ACT to amend and reenact subsection 1 of section 23-09.3-01.1 and subsection 1 of section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on licensing of basic care for medical assistance recipient beds and the moratorium on expansion of long-term care bed capacity; to provide for a legislative council study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2005~~ 2007, and July 31, ~~2007~~ 2009, except when:
 - a. A nursing facility converts nursing facility beds to basic care; or
 - b. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile 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.].
 - c. If the state department of health and the department of human services grant approval of new basic care beds to an entity, the approved entity shall license the beds within forty-eight months from the date of approval.

SECTION 2. AMENDMENT. Subsection 1 of section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2005~~ 2007, and July 31, ~~2007~~ 2009. A nursing facility may not convert licensed nursing bed capacity to basic care bed capacity or convert basic care beds back to nursing facility beds more than one time in a twelve-month period if the beds have been licensed as basic care.

SECTION 3. LEGISLATIVE COUNCIL STUDY - LONG-TERM CARE.

During the 2007-08 interim, the legislative council shall study the state's long-term care system including capacity, geographical boundaries for determining capacity, the need for home and community-based services, a methodology to identify areas of the state which are in need of additional skilled nursing facility beds, access, workforce, reimbursement, and payment incentives. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 2, 2007

Filed May 3, 2007

CHAPTER 241**HOUSE BILL NO. 1488**

(Representatives Kreidt, Nelson, Pollert, Price)
(Senator J. Lee)

BASIC CARE FACILITY SURVEYS

AN ACT to amend and reenact section 23-09.3-04 of the North Dakota Century Code, relating to state department of health surveys of basic care facilities; and to provide for a report to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations. ~~It is the duty of the~~ The department ~~to~~ shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey. The department shall prosecute all violations of this chapter.

SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL. Before August 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process.

Approved April 23, 2007
Filed April 24, 2007

CHAPTER 242**SENATE BILL NO. 2273**

(Senators Erbele, Heitkamp, Wardner)
(Representatives Dietrich, Gulleson, Kretschmar)

HOUSING AUTHORITY BONDS

AN ACT to amend and reenact sections 23-11-11, 23-11-20, and 23-11-21 and subsection 23 of section 23-11-24 of the North Dakota Century Code, relating to housing authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁹ **SECTION 1. AMENDMENT.** Section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

23-11-11. Powers of authority. An authority has the following powers and duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.
3. To have perpetual succession.
4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with this chapter, as are necessary to carry into effect the powers and purposes of the authority.
6. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation.
7. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part of a housing project, within the authority's area of operation.
8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants of a housing project.
9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum wages and maximum hours of labor and

¹³⁹ Section 23-11-11 was also amended by section 3 of House Bill No. 1033, chapter 403, and section 12 of Senate Bill No. 2214, chapter 293.

any conditions that the federal government may have attached to the financial aid for the project.

10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges in the housing project.
11. To own, hold, and improve property.
12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any property or any interest in property.
13. To acquire real property by the exercise of the power of eminent domain.
14. To sell, lease, exchange, transfer, assign, pledge, or dispose of any property, or any interest in property.
15. To insure, or provide for the insurance of, any property, or any operation of the authority, against any risks or hazards.
16. To procure insurance or guaranties from the federal government of the payment of any debts, or parts of debts, secured by mortgages on any property included in any of the authority's housing projects, whether the debts were incurred by the authority or not.
17. To invest any funds held by the authority in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to a savings bank's control.
18. To purchase its bonds at a price not more than the principal amount of the bonds and accrued interest, a bond so purchased is canceled.
19. To investigate, in the authority's area of operation, living, dwelling, and housing conditions and the means and methods of improving the same.
20. To determine, within the authority's area of operation, where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low or moderate income.
21. To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing the slum areas within the authority's area of operation and the problem of providing dwelling accommodations for the persons of low or moderate income, and to cooperate with the city, county, or state, or any political subdivision in any action taken in connection with these problems.
22. To engage in research, studies, and experimentation on the subject of housing within the authority's area of operation.
23. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for the authority's information.

24. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance.
25. To make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within the authority's area of operation, the authority's findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.
26. To issue bonds from time to time for any of its corporate purposes.
27. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by the authority.
28. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within the authority's area of operation.
29. To take over or lease or manage any housing project or undertaking constructed or owned by the federal government.
30. To comply with conditions and to enter into mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out this section.
31. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project.
32. To exercise all or any part or combination of powers granted.
33. To exercise within the authority's area of operation the authority granted to the industrial commission under section 54-17-07.6.
34. To exercise the power to provide operation and maintenance expenses under subdivision a of subsection 23 of section 23-11-24.
35. To exercise the power to issue pledge the general obligation bonds of the city or county for which the housing authority is created in accordance with ~~chapter 21-03~~ subsection 23 of section 23-11-24.
36. To develop a plan identifying the public purposes of the authority's ownership, conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes, and a plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur and to effectuate the plan.
37. To exercise other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections 23, 24, and 25, may act through one or more of the commissioners or through other persons designated by the authority. Provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to an authority unless there is specific provision to that effect by the legislative assembly. The construction of a housing project is a public improvement for which an authority is subject to the competitive bidding requirements of chapter 48-01.1.

SECTION 2. AMENDMENT. Section 23-11-20 of the North Dakota Century Code is amended and reenacted as follows:

23-11-20. Bonds - Types which may be issued.

1. An authority may issue any type of bond as the authority determines necessary for the purpose of financing housing for persons of low or moderate income, including a bond on which the interest and principal are payable:
 - a. Exclusively from the income and revenues of the housing project financed with the proceeds of the bond or with the proceeds together with a grant from the federal government in aid of the project;
 - b. Exclusively from the income and revenues of certain designated housing projects whether the projects are financed in whole or in part with the proceeds of the bond; or
 - c. From the authority's revenues generally.
2. The bonds and other obligations of the authority are not payable out of any funds or properties other than those of the authority or funds of the city or county which has pledged its general obligation pursuant to subsection 23 of section 23-11-24. These bonds, however, may be secured additionally by a pledge of any loan, grant, or contribution, or part of the same, from the federal government or other source of a pledge of any income or revenues or by a mortgage on any housing project, projects, or other property of the authority.

SECTION 3. AMENDMENT. Section 23-11-21 of the North Dakota Century Code is amended and reenacted as follows:

23-11-21. Bonds - Liability - Tax exempt. Neither the commissioners of an authority nor any person executing bonds of the authority is liable personally on the bonds by reason of the issuance of the bonds, ~~nor is any city, county, or state, or political subdivision, liable on the bonds.~~ The bonds and other obligations of an authority are not a debt of the city, county, or state, nor of any political subdivision, ~~and must so state on the face of the bond. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction unless a city or county pledges its general obligation to the payment of the bonds under subsection 23 of section 23-11-24.~~ The bond obligations are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and the bonds, together with the interest on the bonds and income from the bonds are exempt from taxation. The tax exemption provisions of this chapter are considered part of the contract for the security of the bond obligations authorized by this chapter and do not need to be restated in the bond obligations.

SECTION 4. AMENDMENT. Subsection 23 of section 23-11-24 of the North Dakota Century Code is amended and reenacted as follows:

23. To make covenants and to do any acts and things as may be necessary, convenient, or desirable in order to secure the authority's bonds, or, in the absolute discretion of the authority, as will tend to make the bonds more marketable notwithstanding that the covenants, acts, or things are not enumerated, including:
 - a. To the payment of the principal of and interest on bond obligations, when due, there may be pledged as a first charge and lien the gross revenues of the housing project financed in whole or in part by the obligations, and the governing city or county may covenant to provide additional funds for the benefit of that housing project to the extent that the gross revenues in excess of those debt service requirements are not also sufficient from time to time to pay the reasonable operating and maintenance expenses of that housing project.
 - b. The governing body of an authority may pledge the general obligation of the city or county for which the authority was created as additional security for bonds provided that the authority finds that the pledged revenues will equal or exceed one hundred ten percent of the principal and interest due on the bonds for each year, the maturity of the bonds does not exceed thirty-five years, and the principal amount of the issue must be and the general obligation pledge are approved by the governing body of the city or county in which the housing project is located and whose general obligation is pledged. ~~Public hearings~~ A public hearing must be held on issuance of the obligations and the pledge of the general obligation by the city or county in which the housing project is located. The ~~hearings~~ hearing must be held at least fifteen days, but not more than one hundred twenty days, before the sale of the obligations.

Approved May 4, 2007
Filed May 4, 2007

CHAPTER 243**SENATE BILL NO. 2090**

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

**SMOKING POLICY AND BUILDING FUND
EXPENDITURES**

AN ACT to create and enact a new subsection to section 23-12-10 of the North Dakota Century Code, relating to an outdoor smoking policy for certain areas on the state capitol grounds; and to amend and reenact section 48-10-02 of the North Dakota Century Code, relating to use of and expenditures from the capitol building fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-12-10 of the North Dakota Century Code is created and enacted as follows:

Before October 1, 2007, the office of management and budget shall develop and implement a uniform policy regarding smoking restrictions with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds.

SECTION 2. AMENDMENT. Section 48-10-02 of the North Dakota Century Code is amended and reenacted as follows:

48-10-02. Capitol building fund to be administered by the capitol grounds planning commission - Continuing appropriation - Procedure for expenditure of certain funds. The capitol grounds planning commission shall have general powers to superintend the administration of the capitol building fund, its interest and income fund, and its investments and properties. It may cause any lands now held in such funds to be sold at market value, direct the conversion of any securities now held by such funds to cash, approve expenditures from such funds subject to law and legislative appropriations, and to do all other things necessary to carry out the intent and purposes of this section. The board of university and school lands or its designee, on the commission's behalf, shall see to the investment and management of the capitol building fund and its interest and income fund and shall account to the commission concerning these funds at the commission's request.

Provided further, all moneys and other property in the capitol building fund, except as otherwise appropriated, are hereby dedicated and reserved to the exclusive purpose of the construction of an addition to the legislative wing of the state capitol building, and the capitol grounds planning commission shall take necessary steps to accumulate and conserve the money and property in the capitol building fund for such purpose.

The commission may, during any biennium, expend from the interest and income fund of the capitol building fund a sum not to exceed fifty percent of the unencumbered balance on the first day of any biennium, and such amount is hereby appropriated to the capitol grounds planning commission. The expenditure may be made, after consideration of the capitol grounds master plan, for projects or planning but shall not exceed ~~forty~~ one hundred thousand dollars per biennium. The expenditure may only be made upon approval by two-thirds of the total membership of the commission. The expenditure must be made upon a voucher, or vouchers, prepared by the office of management and budget at the direction of the commission.

Approved May 1, 2007

Filed May 2, 2007

CHAPTER 244**HOUSE BILL NO. 1232**

(Representatives Delmore, Hawken, S. Meyer, Pietsch)
(Senators Bakke, Krebsbach)

UMBILICAL CORD BLOOD DONATION

AN ACT to provide for umbilical cord blood donation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Umbilical cord blood donation.

1. Unless it is medically inadvisable, a hospital shall allow a pregnant patient to arrange for the blood extracted from the umbilical cord of the patient's newborn child to be donated to a public cord blood bank. A patient who agrees to donate cord blood to a public cord blood bank may not be charged for the costs of collecting, storing, or transporting the cord blood.
2. A hospital is not required to collect cord blood if in the professional judgment of a licensed physician the collection of the cord blood would threaten the health of the mother or newborn child. This section does not require a hospital or hospital employee, including a physician, nurse, or other medical staff, to collect cord blood if the collection of cord blood conflicts with the bona fide religious practices and beliefs of the hospital or hospital employee. This section does not require a hospital to arrange for the donation of blood extracted from umbilical cords.

Approved March 9, 2007

Filed March 12, 2007

CHAPTER 245**HOUSE BILL NO. 1094**

(Political Subdivisions Committee)
(At the request of the State Department of Health)

UNDERGROUND STORAGE TANK REGULATIONS

AN ACT to amend and reenact section 23-20.3-04.1 of the North Dakota Century Code, relating to underground storage tank regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-20.3-04.1 of the North Dakota Century Code is amended and reenacted as follows:

23-20.3-04.1. Underground storage tank regulations. Pursuant to the requirements of chapter 28-32, the department shall, after notice and opportunity for public hearing and comment, adopt:

1. Regulations 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. Regulations for maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. Regulations for reporting of any releases and corrective action taken in response to a release from an underground tank.
4. Regulations for taking corrective action in response to a release from an underground storage tank.
5. Regulations for the closure of tanks to prevent future releases of regulated substances into the environment.
6. Regulations 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. Regulations establishing standards for installation of new underground storage tanks.
8. Regulations establishing standards for construction and performance of new underground storage tanks.
9. Regulations for notifying the department or designated local agency of the existence of any operational or nonoperational underground storage tank.
10. Regulations 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 federal rules adopted pursuant to Public Law 98-616 [98 Stat. 3277; 42 U.S.C. 6994 et seq.] requirements of the federal Resource Conservation and Recovery Act and the federal Energy Policy Act of 2005 in effect on August 1, 2007.

Approved March 15, 2007
Filed March 15, 2007

CHAPTER 246**HOUSE BILL NO. 1161**

(Representatives Uglem, DeKrey, Froelich, Vigesaa)
(Senators Bowman, Krauter)

**EMERGENCY SERVICES AND PERSONNEL
REGULATION**

AN ACT to amend and reenact sections 23-27-01, 23-27-02, 23-27-03, and 23-27-04, subsections 2 and 3 of section 23-27-04.1, and sections 23-27-04.2 and 23-27-04.4 of the North Dakota Century Code, relating to regulation of emergency medical services operations and emergency medical services personnel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-01 of the North Dakota Century Code is amended and reenacted as follows:

23-27-01. License required - Licensing of emergency medical services operations - Exception - Waiver.

1. The state department of health shall license emergency medical services operations. After June 30, 2001, the department shall limit the issuance of a license for any new emergency medical services operation based on the needs of the service area if the applicant for the new license was licensed before July 1, 2001, and was subsequently relicensed under section 23-27-04.5. A license for an emergency medical services operation is nontransferable.
2. Emergency medical services may not be advertised, offered, or provided to the public ~~unless the~~ except by an emergency medical services operator of the services is licensed as an emergency medical services operation by the department that provides the emergency medical services through emergency medical services personnel. A license for an operator of an emergency medical services operation is nontransferable and the
3. Except as otherwise provided under subsection 4, an emergency medical services operator must be separately licensed for each operation that operator operates. Each of the operator's emergency medical services operations and an operation that is headquartered from a separate location must be considered a separate operation; however, Under this subsection, an operation with a single headquarters site may dispatch vehicles and emergency medical services personnel from more than one location if calls requesting services are received and orders for vehicle dispatch are made at the single headquarters site.
4. Notwithstanding subsection 3, an operator of an emergency medical services operation may operate one or more substation ambulance services operations under a single license if:

- a. The headquarters ambulance services operation is not a substation ambulance services operation of another emergency medical services operation;
 - b. The substation ambulance services operation area borders the headquarters ambulance services operation area or borders another substation of the headquarters ambulance service operation;
 - c. The headquarters ambulance services operation and the substation ambulance services operation are dispatched by the same entity; and
 - d. The operator of the emergency medical services operation pays a license fee for each of its substation ambulance services operations.
- 3- 5. The provisions of this chapter do not apply to an operator from another state ~~who~~ which is headquartered at a location outside of this state and transports patients across state lines, but the operator may not treat patients within this state or pick up patients within this state for transportation to locations within this state, except as provided by rule.
- 4- 6. The state health council shall adopt rules for special licenses and waiver provisions for an operator of an emergency medical services operation intended for industrial sites not available to the general public.

SECTION 2. AMENDMENT. Section 23-27-02 of the North Dakota Century Code is amended and reenacted as follows:

23-27-02. Definition of emergency medical services Definitions. For the purpose of this chapter, ~~"emergency unless the context otherwise requires:~~

1. "Department" means the state department of health.
2. "Emergency medical services" means the prehospital medical stabilization ~~or~~ and transportation of ~~persons~~ individuals who are sick, injured, wounded, or otherwise incapacitated or helpless by ~~any person~~ who holds out to the public as being in that service or who regularly provides that service emergency medical services personnel with physician oversight. The term includes assessing, stabilizing, and treating life-threatening and non-life-threatening medical conditions.
3. "Emergency medical services operation" means an entity licensed to offer and provide emergency medical services by emergency medical services personnel with physician oversight. The term includes basic life support ambulance services, advanced life support ambulance services, air ambulance services, and quick-response unit services.
4. "Emergency medical services personnel" means individuals who provide emergency medical services for emergency medical services operations. The term includes emergency medical services professionals, drivers, and department-certified emergency medical services providers, such as cardiopulmonary resuscitation drivers and first responders.

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.

SECTION 3. AMENDMENT. Section 23-27-03 of the North Dakota Century Code is amended and reenacted as follows:

23-27-03. License fees. The fee for a an emergency medical services operation license to operate an emergency medical services operation ~~and perform emergency medical services or a substation ambulance services operation~~ must be set by the state health council at a sum of not more than twenty-five dollars annually, as may be required to defray the costs of administration of the licensing program. ~~Individuals providing~~ This operation license fee does not apply to licensure or certification of emergency medical services ~~may not be assessed this license fee personnel.~~ All license fees must be paid to the state department of health and deposited with the state treasurer and credited to the state general fund.

SECTION 4. AMENDMENT. Section 23-27-04 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04. Standards for operators.

1. An emergency medical services operation within this state may not operate unless the operation is licensed in accordance with this chapter and rules adopted by the state health council. The rules must include:
 - a. Time when operator's services must be available.
 - b. Type of motor vehicle operator's license needed for drivers of ground vehicles.
 - c. Training standards for operation personnel.
 - d. Equipment and ground vehicle standards.
 - e. Annual license fees.
 - f. Number of personnel required for each run.
 - g. The scope of practice for uncertified drivers, certified personnel, and emergency medical services professionals.
 - h. Other requirements as may be found necessary to carry out the intent of this chapter.
2. An officer, employee, or agent of any prehospital emergency medical ~~service services operation~~ may refuse to transport an individual for which transport is not medically necessary and may recommend an alternative course of action to that individual if the prehospital emergency medical service has developed protocols that include direct medical control to refuse transport of an individual.

SECTION 5. AMENDMENT. Subsections 2 and 3 of section 23-27-04.1 of the North Dakota Century Code are amended and reenacted as follows:

2. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered, provided that the fees do not exceed ~~twenty-four hundred~~ ten thousand dollars in any calendar year.
3. For a volunteer physician providing medical ~~direction overview~~ to an emergency medical services operation and the operation's personnel, the ~~twenty-four hundred ten thousand~~ dollar maximum fees amount is calculated separately for each emergency medical services operation for which the physician volunteered medical ~~direction overview~~. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

SECTION 6. AMENDMENT. Section 23-27-04.2 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.2. Emergency medical services - State assistance. The state department of health shall assist in the training of emergency medical services personnel of certain emergency medical services operations as determined by the department and financially shall assist certain emergency medical services operations as determined by the department in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The department shall adopt criteria for eligibility for assistance in the training of emergency medical services personnel of various types of emergency medical services operations. To qualify for financial assistance for equipment an emergency medical services operation shall certify, in the manner required by the department, that the operation has fifty percent of the amount of funds necessary for identified equipment acquisitions. The department shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The department may establish minimum and maximum amounts of financial assistance to be provided to an emergency medical services operation under this section. If applications for financial assistance exceed the amount of allocated and available funds, the department may prorate the funds among the applicants in accordance with criteria adopted by the department. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

SECTION 7. 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 ~~service~~ medical technician hospital personnel. Certified or licensed emergency medical technicians-intermediate and paramedics, who are employed by a hospital and who are working in a nonemergency setting 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 ~~patient services management~~ nurse executive.

Approved March 23, 2007

Filed March 23, 2007

CHAPTER 247**HOUSE BILL NO. 1162**

(Representatives Haas, D. Johnson, Monson, Schmidt)
(Senators J. Lee, Warner)

EMERGENCY SERVICES COVERAGE AND CARE

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to a state health council study of emergency medical services, county reporting of emergency medical services coverage, and use of property tax levies for emergency medical services; to amend and reenact section 14-10-17.1 of the North Dakota Century Code, relating to consent for a minor to receive emergency medical care; and to provide for a report to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-10-17.1 of the North Dakota Century Code is amended reenacted as follows:

14-10-17.1. Minor's emergency care. ~~Any~~ A minor may contract for and receive emergency examination, care, or treatment in a life-threatening situation without ~~permission, authority, or the consent of a~~ the minor's parent or guardian. If a minor has an emergency medical condition or the potential for an emergency medical condition, consent to emergency examination, care, or treatment of the minor is implied if reasonable steps to contact the minor's parent or guardian are unsuccessful. This section does not authorize a minor to withhold consent to emergency examination, care, or treatment.

SECTION 2. A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

Study of standards of reasonable coverage - County reporting - Use of property tax levies.

1. During the 2007-08 interim, the state health council shall study the minimum requirements of reasonable emergency medical services coverage which must take into account the response time for emergency medical services. Before July 1, 2008, the state health officer shall report to the legislative council the outcome and recommendations of this study.
2. The board of county commissioners of every county in this state shall conduct an annual review of the emergency medical services coverage within that county and shall submit an annual report to the state health officer in a format approved by the state department of health.

3. A taxing district that levies property taxes for support of emergency medical services shall ensure that every emergency medical services operation that operates in that taxing district receives a benefit of this tax.

Approved March 23, 2007
Filed March 23, 2007

CHAPTER 248**HOUSE BILL NO. 1109**

(Representative Wald)

**PETROLEUM TANK RELEASE COMPENSATION
DEFINITIONS AND FEES**

AN ACT to amend and reenact sections 23-37-02 and 23-37-17 of the North Dakota Century Code, relating to petroleum tank release compensation fund definitions and registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-37-02 of the North Dakota Century Code is amended and reenacted as follows:

23-37-02. (Effective through July 31, 2011) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means, in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials and that 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 any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
7. "Department" means the state department of health.
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 any person in control of, or having responsibility for, the daily operation of a tank under this chapter.

- ~~40-~~ 11. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~44-~~ 12. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
- ~~42-~~ 13. "Petroleum" means any of the following:
- a. Gasoline and petroleum products as defined in chapter 19-10.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
- ~~43-~~ 14. "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.
15. "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.
- ~~44-~~ 16. "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, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - 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.
17. "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.
- 45- 18. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 2. AMENDMENT. Section 23-37-17 of the North Dakota Century Code is amended and reenacted as follows:

23-37-17. (Effective through July 31, 2011) 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 on the first day of July in any year the amount of money in the petroleum release compensation fund is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund 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. Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of five dollars until the money in the fund does not exceed nine million dollars. ~~An owner or operator of a tank that was required to be registered by law on or before July 1, 2001, shall pay seventy-five dollars for each aboveground tank and one hundred~~

twenty-five dollars for each underground tank owned or operated by that person for any previous years that the tank was required to be registered for which a fee was not paid.

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 on or before July 1, 2007, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for 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, on or before July 1, 2007, 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 seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for an underground tank for each underground tank 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.
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.

Approved March 9, 2007
Filed March 12, 2007

CHAPTER 249**HOUSE BILL NO. 1154**

(Representative Keiser)
(Senator Kilzer)

TANNING FACILITY REGULATION

AN ACT to create and enact chapter 23-39 of the North Dakota Century Code, relating to regulation of tanning facilities; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 23-39 of the North Dakota Century Code is created and enacted as follows:

23-39-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Department" means the state department of health.
2. "Phototherapy device" means equipment that emits ultraviolet radiation and is used in treating disease.
3. "Tanning device" means equipment that emits electromagnetic radiation having wavelengths in the air between two hundred and four hundred nanometers and which is used for tanning of human skin and any equipment used with that equipment, including food and drug administration-approved protective eyewear, timers, and handrails. The term does not include a phototherapy device used by a physician.
4. "Tanning facility" means a place or business that provides individuals access to a tanning device.

23-39-02. Permit - Fee.

1. A person may not operate a tanning facility without a permit issued by the department under this chapter. The holder of a permit shall display the permit in a conspicuous place at the tanning facility for which the permit is issued. Permits issued under this chapter expire annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the tanning facility and any other information reasonably required by the department for the administration of this section.
2. The permit fee established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and the cost of preparing and sending license renewals. Any fee collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department

shall waive all or a portion of the permit fee for any tanning facility that is subject to local jurisdiction.

3. The department shall accept city or county enforcement of this chapter if the department determines the city or county requirements meet or exceed the requirements of this chapter and any rules adopted under this chapter.

23-39-03. Advertising - Notice - Warning sign - Tubes - Prohibited claims.

1. A tanning facility may not state in any advertising that the tanning facility holds a license or permit issued by the department to operate a tanning facility.
2. A tanning facility shall give to each of the tanning facility's customers written notice of the following:
 - a. Failure to wear the eye protection provided by the tanning facility may result in damage to the customer's eyes and may cause cataracts;
 - b. Overexposure to a tanning device causes burns;
 - c. Repeated exposure to a tanning device may cause premature aging of the skin and may cause skin cancer;
 - d. Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by:
 - (1) Certain foods;
 - (2) Certain cosmetics; and
 - (3) Certain medications, including tranquilizers, diuretics, antibiotics, high blood pressure medicines, and birth control pills; and
 - e. An individual who takes a drug should consult a physician before using a tanning device.
3. A tanning facility shall display prominently a warning sign in each area where a tanning device is used. The warning sign must convey the following directions and information:
 - a. Follow instructions.
 - b. Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.
 - c. Wear food and drug administration-approved protective eyewear.

- d. Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.
 - e. Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.
 - f. If your skin does not tan when exposed to the sun, it is unlikely that your skin will tan when exposed to this tanning device.
- 4. The tanning facility shall maintain a record of the date on which each fluorescent tube is replaced.
 - 5. An owner or employee of a tanning facility may not claim, or distribute materials that claim, that using a tanning device is free of risk.

23-39-04. Liability. A tanning facility's compliance with this chapter does not relieve the owner or any employee of the tanning facility from liability for injury sustained by a user of a tanning device.

23-39-05. Duties.

- 1. The owner of a tanning facility shall ensure that all of the following are fulfilled:
 - a. A customer under eighteen years of age may not be permitted to use the tanning facility until the customer provides the facility with written consent, in a form prescribed by the department, of a parent or legal guardian to use the tanning facility. The consent must indicate that the parent or legal guardian has read the warnings required by this chapter and that the customer agrees to wear food and drug administration-approved protective eyewear. The parent or legal guardian shall provide a notarized statement of consent or sign the consent form in the presence of the owner of the tanning facility or an employee responsible for the operation of the ultraviolet radiation device of the facility. The written consent form expires twelve months from the date signed. A customer under the age of fourteen years may not be allowed to utilize a tanning device at a tanning facility without a written order from a physician licensed in this state and without being accompanied by a parent or legal guardian for every use of the tanning facility.
 - b. During operating hours there is present at the tanning facility a trained operator who is able to inform customers about, and assist customers in, the proper use of tanning devices.
 - c. Each tanning bed is properly sanitized after each use.
 - d. Properly sanitized and securely fitting food and drug administration-approved protective eyewear that protects the

wearer's eyes from ultraviolet radiation and allows enough vision to maintain balance is made available to the customer.

- e. A customer is not allowed to use a tanning device unless the customer agrees to use food and drug administration-approved protective eyewear.
 - f. A customer is shown how to use such physical aids as handrails and markings on the floor to determine the proper distance from the tanning device.
 - g. A timing device that is accurate within ten percent is used.
 - h. Each tanning device is equipped with a mechanism that allows the customer to turn off the tanning device.
 - i. A customer is limited to the maximum exposure time recommended by the manufacturer.
 - j. A customer is not allowed to use a tanning device more than once every twenty-four hours.
 - k. The interior temperature of the tanning facility does not exceed one hundred degrees Fahrenheit.
 - l. The statements under subdivision a of subsection 2 are retained by the tanning facility for the lesser of three years or until the customer signs a new statement.
2. A user of a tanning facility shall do all of the following:
- a. Immediately before the customer's first use of a tanning facility in a year, sign a statement acknowledging that the customer has read and understands the notice under subsection 2 of section 23-39-03 and the warning sign under subsection 3 of section 23-39-03 and specifying that the customer agrees to use food and drug administration-approved protective eyewear.
 - b. Use food and drug administration-approved protective eyewear at all times while using a tanning device.

23-39-06. Injury reports. If a customer of a tanning facility reports a sunburn injury to that facility resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the state department of health. If a health care provider treats a patient for a sunburn injury and determines, in the exercise of professional judgment, that the injury occurred as a result of using a tanning device at a tanning facility, the health care provider shall report the circumstances of the injury to the state department of health. A health care provider making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

23-39-07. Enforcement - Rules - Penalty. The department shall enforce this chapter. The state health council shall adopt rules necessary to implement this chapter. The department may deny issuance of a permit to an applicant or suspend or revoke any permit issued under this chapter if the applicant or permitholder, or an employee of the applicant or permitholder, violates this chapter or any rule adopted to implement this chapter. Violation of this chapter or any rule adopted to implement this chapter is a class B misdemeanor.

Approved April 23, 2007

Filed April 24, 2007

CHAPTER 250

HOUSE BILL NO. 1296

(Representatives Haas, Boe, Vigesaa, Wald)
(Senators Andrist, Warner)

INSURANCE PREMIUM TAX DISTRIBUTION

AN ACT to create and enact chapter 23-40 of the North Dakota Century Code, relating to distribution of insurance premiums tax collections to emergency medical services operations; to amend and reenact section 18-04-04.1 and subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to the insurance premiums tax collections; to provide for a report; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

18-04-04.1. Insurance tax distribution fund. The insurance tax distribution fund is a special fund in the state treasury. The portion of revenue provided in section 26.1-03-17 must be deposited in the fund for disbursement as provided in this chapter and chapter 23-40, subject to legislative appropriation.

SECTION 2. Chapter 23-40 of the North Dakota Century Code is created and enacted as follows:

23-40-01. Eligibility. To be eligible to apply for funds under this chapter, an applicant must be the licenseholder of an emergency medical services operation that has been licensed under chapter 23-27 for a period of at least twelve months before the filing of the application under section 23-40-02, must bill for services at a level at least equivalent to the medicare billing level, and must meet any additional requirements set by rule adopted by the state health council.

23-40-02. Application. Before November first of each year, the licenseholder of an emergency medical services operation shall file a complete application with the state department of health on a form provided by the department. The application must include an affirmation of the operation's billing levels, documentation of the availability of local matching funds, and other information as may be required by the department.

23-40-03. Strategic plan. The state department of health shall establish and update regularly a strategic plan for an integrated emergency medical services program in this state which includes a comprehensive statewide emergency medical services system. The strategic plan may include consideration of transportation distances to hospitals, the size of service areas, the distance between emergency medical services operations, the age of emergency medical services personnel, the use of and the willingness to use first responders, the feasibility of consolidation of emergency medical services operations, the types of calls received, and call volume.

23-40-04. Eligibility for distribution of funds. The state health officer shall make eligibility determinations, level of local matching funds determinations, and distribution amount determinations under this chapter in accordance with the

department's strategic plan for providing emergency medical services in this state. The department shall establish a sliding percent formula for determining the percentage of an applicant's local matching fund obligation. The sliding percent formula must be based on the department's strategic plan and must include consideration of how the applicant fits into the strategic plan and consideration of the needs of emergency medical services operations in the applicant's neighboring service areas. Eligibility for funds under this chapter is not an entitlement. The state health officer may not distribute funds to an applicant unless the applicant has verified the existence of local matching funds at the level determined by the state health officer, but which must be at least ten percent but not more than ninety percent of the proposed distribution amount.

23-40-05. Allocation for distribution of funds. During the first year of the biennium, the state health officer may not distribute more than one-half of the biennial legislative appropriation and during the second year of the biennium the state health officer may distribute the remainder of the biennial legislative appropriation.

23-40-06. Use of funds. A recipient of funds under this chapter shall use the funds in a manner consistent with rules adopted by the state health council. A recipient of funds may not use funds for capital expenses such as emergency vehicles and emergency medical services equipment.

¹⁴⁰ **SECTION 3. AMENDMENT.** Subsection 1 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except fraternal benefit and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under ~~section~~ sections 18-04-05 and 23-40-05 in any fiscal year. Collections from this tax exceeding the amount deposited in the insurance tax distribution fund each fiscal year must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.

¹⁴⁰ Section 26.1-03-17 was also amended by section 2 of Senate Bill No. 2183, chapter 206.

SECTION 4. ASSESSMENT OF STATE'S EMERGENCY MEDICAL SERVICES SYSTEM - REPORT. The state department of health shall seek to contract with a third party for an assessment of the state's emergency medical services system to assist in developing an integrated emergency medical services program that includes a comprehensive statewide emergency medical services system. The assessment may address regulation and policy; resource management; human resources and training; transportation; facilities; communications; trauma systems; public information, education, and prevention; medical direction; and an evaluation. The department shall report the findings to the legislative council no later than July 1, 2008.

SECTION 5. APPROPRIATION. There is appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$1,250,000, or so much of the sum as may be necessary, to the state department of health for the purpose of making payments of insurance premiums tax collections to emergency medical services operations, for the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$30,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding an assessment of the state's emergency medical services system under section 4 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 1, 2007
Filed May 2, 2007