

OFFICES AND OFFICERS

CHAPTER 332

SENATE BILL NO. 2232

(Senators Andrist, Burckhard, Nelson)
(Representatives Froseth, Kilichowski, Maragos)

AN ACT to create and enact a new section to chapter 44-04, a new subsection to section 44-04-18.7, and a new section to chapter 54-40.3 of the North Dakota Century Code, relating to the exemption of medical treatment information in an emergency response record, the exemption of crime scene images, and to joint powers agreements between political subdivisions for a joint emergency services communications system; to amend and reenact sections 32-12.2-12 and 44-04-17.1, subsections 2 and 3 of section 44-04-18, subsection 2 of section 44-04-18.1, subsection 1 of section 44-04-18.3, subsection 3 of section 44-04-18.7, and subsections 2, 3, 4, and 6 of section 44-04-20 of the North Dakota Century Code, relating to state agency loss control committee meetings, the definition of information technology resources, fees and access to electronic records, exempt personal information of a public employee, release of personnel records of employees of the department of corrections and rehabilitation, definition of criminal intelligence information, and public meeting notices posted on a website of a public entity; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.2-12 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-12. State agency loss control committee records and meetings privileged and exempt from open records and open meetings law.

The portions of the records and meetings of any state agency loss control committee dealing with confidential records addressing any pending or reasonably predictable claim are not public records or exempt from section 44-04-18 and are not open records under section 6 of article XI of the Constitution of North Dakota unless the director of the office of management and budget determines disclosure will not prejudice any pending or reasonably predictable claim and the meetings of any loss control committee of a governing body are not public meetings subject to sections 44-04-18 and section 44-04-19 and sections section 5 and 6 of article XI of the Constitution of North Dakota. TheseThe records and communications at meetings of the committee regarding any pending or reasonably predictable claim are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil action. The records of the committee include all information, data, reports, or records created by or made available to the committee. Any information, data, report, or record otherwise available from original sources is not confidential or immune from discovery or use in any civil action merely because it was presented or considered during the proceedings of the committee. A person who testified before the committee or who is a member of the committee may testify as to matters within that person's

knowledge but may not be asked about the records of, the testimony before, or the discussions of the committee. This section does not relieve any person of any liability incurred as a result of actions reviewed by the committee.

SECTION 2. AMENDMENT. Section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

44-04-17.1. Definitions.

As used in this section through section ~~44-04-21~~44-04-32:

1. "Closed meeting" means all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purposes of a closed meeting may be admitted.
 2. "Closed record" means all or part of an exempt record that a public entity in its discretion has not opened to the public.
 3. "Confidential meeting" or "confidential record" means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.
 4. "Executive session" means all or part of a meeting that is closed or confidential.
 5. "Exempt meeting" or "exempt record" means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.
 6. "Governing body" means the multimember body responsible for making a collective decision on behalf of a public entity. "Governing body" also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.
 7. "Information technology resources" includes data processing hardware and software or technology support services necessary to facilitate a response to a request for electronic records.
 8. "Law" includes federal statutes, applicable federal regulations, and state statutes.
- ~~8-9~~ a. "Meeting" means a formal or informal gathering or a work session, whether in person or through electronic means such as telephone or videoconference, of:
- (1) A quorum of the members of the governing body of a public entity regarding public business; or
 - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" does not include:

- (1) A chance or social gathering at which public business is not considered;
 - (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group; and
 - (3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.
- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.

9-10. "Organization or agency supported in whole or in part by public funds" means an organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.

40-11. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.

44-12. "Public business" means all matters that relate or may foreseeably relate in any way to:

- a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
- b. The public entity's use of public funds.

42-13. "Public entity" means all:

- a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;
- b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order

of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and

- c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.

~~43-14.~~ "Public funds" means cash and other assets with more than minimal value received from the state or any political subdivision of the state.

~~44-15.~~ "Quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.

~~45-16.~~ "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.

~~46-17.~~ "Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 44-04-18 of the North Dakota Century Code are amended and reenacted as follows:

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

3. Access to electronically stored records is free if the records are recoverable without the use of a computer backup. If a request is made for access to a record on a backup, or for a copy of an electronically stored record, in addition to the charge in this section, the public entity may charge a reasonable fee for providing the copies, including costs attributable to the use of information technology resources. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.

SECTION 4. AMENDMENT. Subsection 2 of section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.

SECTION 5. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Medical condition or medical treatment information obtained during emergency medical response - Exempt.

The medical condition of an individual, medical treatment provided to an individual, and the name of an individual who received medical treatment from a public entity during an emergency medical response is an exempt record.

SECTION 6. AMENDMENT. Subsection 1 of section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

1. Any telephone number and the home address of a juvenile court ~~supervisor~~director or probation officer, an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential. ~~A record containing information relating to~~ Information contained in a personnel record of an employee of the department of corrections and rehabilitation may not be

disclosed to an appropriate authority under policy established by the department of corrections and rehabilitation inmate in the legal custody of the department of corrections and rehabilitation confined in a jail, prison, or other correctional facility unless authorized by the director of the department of corrections and rehabilitation.

SECTION 7. AMENDMENT. Subsection 3 of section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

3. "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information must be considered "active" as long as it is related to intelligence gathering conducted with a reasonable good-faith belief ~~that~~ it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal intelligence information also includes training materials and information obtained by a criminal justice agency regarding prospective criminal activities which impact officer safety until the information is publicly disclosed.

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

Crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime is an exempt record as defined in subsection 5 of section 44-04-17.1.

SECTION 9. AMENDMENT. Subsections 2, 3, 4, and 6 of section 44-04-20 of the North Dakota Century Code are amended and reenacted as follows:

2. The notice required in this section must contain the date, time, and location of the meeting and, if practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice must also contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by telephone or videoconference, or other electronic means, the location of the meeting and the place the meeting is held is the location of a speakerphone or monitor as required under section 44-04-19.
3. If the governing body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually in January with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies or the schedule must be posted on the public entity's website. This schedule must be furnished to anyone who requests the information. When reasonable and practicable, a governing body of a public entity should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information

contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, ~~and~~ the county auditor or designee of the county for all other bodies, or posted on the public entity's website. This subsection does not apply to meetings of the legislative assembly or any committee thereof.

6. In the event of emergency or special meetings of a governing body, the person calling such a meeting shall, in addition to the notices in subsection 4, also notify the public entity's official newspaper, if any, and any representatives of the news media which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such governing body's members are notified. If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located. Topics that may be considered at an emergency or special meeting are limited to those included in the notice.

SECTION 10. A new section to chapter 54-40.3 of the North Dakota Century Code is created and enacted as follows:

Application of open records law.

If a joint powers agreement is entered into between a political subdivision of this state and a political subdivision of another state which creates a joint emergency services communications system, the joint powers agreement must address which jurisdiction's open records law will apply in the event a request is made for records that originated from the partner state but is in the possession of the joint emergency services communications system located in North Dakota. The agreement may provide that the emergency services records may be provided pursuant to the open records law of the originating state. If the joint powers agreement does not address this matter, it will be presumed that records will be provided pursuant to North Dakota law.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2011
Filed April 11, 2011

CHAPTER 333

HOUSE BILL NO. 1396

(Representatives Delmore, Dahl, DeKrey, Hawken)
(Senators Flakoll, Schneider)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to exempting certain library, archive, and museum collections from open records requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Library, archive, and museum collections - Exempt records.

A public library, archive, or museum may designate a donated record as an exempt record if the donor of the record requests as a condition of the donation that the record not be released to the public for a specific amount of time, which may not exceed twenty years beyond the death of the donor.

Approved April 4, 2011
Filed April 4, 2011

CHAPTER 334

HOUSE BILL NO. 1136

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 44-06.1 of the North Dakota Century Code, relating to notarial acts; to amend and reenact subsection 6 of section 10-19.1-84, subsection 4 of section 44-05-01, and sections 44-08-06 and 47-19-18 of the North Dakota Century Code, relating to notarial acts; to repeal chapter 44-06 and sections 47-19-14.1, 47-19-14.2, 47-19-14.3, 47-19-14.4, 47-19-14.5, 47-19-14.6, 47-19-14.7, and 47-19-14.8 of the North Dakota Century Code, relating to notarial acts; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁰ **SECTION 1. AMENDMENT.** Subsection 6 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

6. A shareholder, beneficial owner, or holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter ~~44-06~~44-06.1, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.

SECTION 2. AMENDMENT. Subsection 4 of section 44-05-01 of the North Dakota Century Code is amended and reenacted as follows:

4. Notary public anywhere in the state, ~~upon complying with section 44-06-04.~~

SECTION 3. Chapter 44-06.1 of the North Dakota Century Code is created and enacted as follows:

44-06.1-01. Definitions.

As provided in this chapter:

1. "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or person identified in the record.
2. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

¹²⁰ Section 10-19.1-84 was also amended by section 19 of Senate Bill No. 2174, chapter 87.

3. "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.
4. "In a representative capacity" means acting as:
 - a. An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;
 - b. A public officer, personal representative, guardian, or other representative, in the capacity stated in a record;
 - c. An agent or attorney in fact for a principal; or
 - d. An authorized representative of another in any other capacity.
5. "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy except as provided in subdivision j of subsection 6 of section 44-06.1-23, and noting a protest of a negotiable instrument.
6. "Notarial officer" means a notary public or other individual authorized to perform a notarial act.
7. "Notary public" means an individual commissioned to perform a notarial act by the secretary of state.
8. "Official stamp" means a physical image affixed to a tangible record or an electronic image attached to or logically associated with an electronic record.
9. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
10. "Sign" means, with present intent to authenticate or adopt a record:
 - a. To execute or adopt a tangible symbol; or
 - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
11. "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.
12. "Stamping device" means:
 - a. A physical device capable of affixing to a tangible record an official stamp; or
 - b. An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

13. "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

44-06.1-02. Applicability.

The provisions of this chapter apply to notarial acts performed on or after the effective date of this chapter.

44-06.1-03. Authority to perform notarial acts.

A notarial officer may perform notarial acts authorized by this chapter or by other law of this state.

44-06.1-04. Requirements for certain notarial acts.

1. A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.
2. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.
3. A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.
4. A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.
5. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in section 41-03-62.

44-06.1-05. Personal appearance required.

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

44-06.1-06. Identification of individual.

1. A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.
2. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

a. By means of:

- (1) A passport, driver's license, or government-issued nondriver identification card that is currently valid or expired not more than three years before performance of the notarial act; or
- (2) Another form of government identification issued to an individual that is currently valid or expired not more than three years before performance of the notarial act, contains the individual's signature or a photograph of the individual, and is satisfactory to the officer; or

b. By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government-issued nondriver identification card that is currently valid or expired not more than three years before performance of the notarial act.

3. A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

44-06.1-07. Authority to refuse to perform notarial act.

1. A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

- a. The individual executing the record is competent or has the capacity to execute the record; or
- b. The individual's signature is knowingly and voluntarily made.

2. Except as prohibited by law other than the provisions of this chapter, a notarial officer may refuse to perform a notarial act.

44-06.1-08. Signature if individual unable to sign.

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (insert name of other individual) at the direction of (insert name of individual)" or words of similar import.

44-06.1-09. Notarial act in this state.

1. A notarial act may be performed in this state by the following individuals:

- a. A notary public of this state;
- b. A judge, clerk, or deputy clerk of any court of this state; or
- c. Any other individual authorized to perform the specific act by the law of this state.

2. The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

44-06.1-10. Notarial act in another state.

1. A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:
 - a. A notary public of that state;
 - b. A judge, clerk, or deputy clerk of a court of that state; or
 - c. Any other individual authorized by the law of that state to perform the notarial act.
2. The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

44-06.1-11. Notarial act under authority of tribe.

1. A notarial act performed under the authority and in the jurisdiction of a federally recognized American Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of that tribe is performed by:
 - a. A notary public of that tribe;
 - b. A judge, clerk, or deputy clerk of a court of that tribe; or
 - c. Any other individual authorized by the law of that tribe to perform the notarial act.
2. The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized American Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.
3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

44-06.1-12. Notarial act under federal authority.

1. A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:
 - a. A judge, clerk, or deputy clerk of a court;

- b. An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
 - c. An individual designated a notarizing officer by the United States department of state for performing notarial acts overseas; or
 - d. Any other individual authorized by federal law to perform the notarial act.
2. The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.
 3. The signature and title of an officer described in subdivision a, b, or c of subsection 1 establish the authority of the officer to perform the notarial act.

44-06.1-13. Foreign notarial act.

1. In this section, "foreign state" means a government other than the United States, a state, or a federally recognized American Indian tribe.
2. If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.
3. If the title of office and indication of authority to perform notarial acts in a foreign state appear in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.
4. The signature and official stamp of an individual holding an office described in subsection 3 are prima facie evidence that the signature is genuine and the individual holds the designated title.
5. An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Hague Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.
6. A consular authentication issued by an individual designated by the United States department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

44-06.1-14. Certificate of notarial act.

1. A notarial act must be evidenced by a certificate. The certificate must:
 - a. Be executed contemporaneously with the performance of the notarial act;

- b. Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the secretary of state;
 - c. Identify the jurisdiction in which the notarial act is performed;
 - d. Contain the title of office of the notarial officer; and
 - e. Indicate the date of expiration, if any, of the notarial officer's commission, if the officer is a notary public.
2. If a notarial act is performed by a notary public regarding a tangible record, the notary public's official stamp must be affixed to the certificate. If a notarial act is performed by a notarial officer, other than a notary public, regarding a tangible record and the certificate contains the information specified in subdivisions b, c, and d of subsection 1, an official stamp may be affixed to the certificate. If the notarial act is performed by a notarial officer regarding an electronic record and the certificate contains the information specified in subdivisions b, c, and d of subsection 1, an official stamp may be attached to or logically associated with the certificate.
3. A certificate of a notarial act is sufficient if it meets the requirements of subsections 1 and 2 and:
 - a. Is in a short form set forth in section 44-06.1-19;
 - b. Is in a form otherwise permitted by the law of this state;
 - c. Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or
 - d. Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections 44-06.1-04, 44-06.1-05, and 44-06.1-06 or other law.
4. By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections 44-06.1-04, 44-06.1-05, and 44-06.1-06.
5. A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.
6. If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the secretary of state has established standards pursuant to section 44-06.1-25 for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

44-06.1-15. Official stamp.

The official stamp of a notary public must:

1. Include the notary public's name, jurisdiction, commission expiration date, and other information required under section 44-06.1-16 or by the secretary of state; and
2. Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

44-06.1-16. Stamping device.

1. The secretary of state, upon receipt of the proper fee, oath, and bond, shall issue a certificate of authorization with which the notary public may obtain an official notary stamping device. A notary stamp vendor may provide a notary with an official stamping device only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's stamp on the certificate of authorization and return the certificate of authorization to the secretary of state. After the certificate of authorization is received, approved, and filed, the secretary of state shall issue a notary commission that authorizes the notary to commence the duties of the office of notary public. A notary being commissioned must obtain a stamping device approved by the secretary of state which must be designed to leave a clear impression, be photographically reproducible, include the words "State of North Dakota" and "Notary Public", contain the name and commission expiration date of the notary public exactly as shown on the notary's commission, and which may not contain any other words, numbers, symbols, or a reproduction of the great seal of the state. All notary stamps must be surrounded by a border and, except as otherwise permitted by the secretary of state, be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.
2. A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other individual knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.
3. If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the secretary of state on discovering that the device is lost or stolen.
4. An official stamping device is the property of the notary only and may not be retained or used by any other person, including an employer of a notary even if the employer purchased or paid for the notary's stamping device. An official stamping device must remain in the direct and exclusive control of the notary at all times during a notary's commission.

44-06.1-17. Notary vacancies - Resignations.

Whenever the office of any notary public becomes vacant, the record of the notary together with all papers relating to the office must be deposited in the office of the secretary of state except for the stamping device, which must be destroyed as provided in section 44-06.1-16. If a notary public resigns the notary's commission, the notary shall notify the secretary of state within thirty days of the resignation, and shall indicate the effective date of the resignation. Any notary public who, on resignation or removal from office, or any executor or personal representative of the estate of any deceased notary public who neglects to deposit the records and papers as aforesaid for the space of three months, or any person who knowingly destroys, defaces, or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars, and that person also is liable in a civil action for damages to any party injured.

44-06.1-18. (Effective after July 31, 2013) Notification regarding performance of notarial acts on electronic record - Selection of technology.

1. A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. An individual may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.
2. Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the secretary of state has established standards for approval of technology pursuant to section 44-06.1-25, the technology must conform to the standards. If the technology conforms to the standards, the secretary of state shall approve the use of the technology.

44-06.1-19. Short form.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by subsections 1 and 2 of section 44-06.1-14:

1. For an acknowledgment in an individual capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by _____

Date Name(s) of individual(s)

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

2. For an acknowledgment in a representative capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by _____

Date Name(s) of individual(s)

(type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed.)

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

3. For a verification on oath or affirmation:

State of _____

[County] of _____

Signed and sworn to (or affirmed) before me on _____ by _____

Date Name(s) of individual(s)

making statement

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

4. For witnessing or attesting a signature:

State of _____

[County] of _____

Signed [or attested] before me on _____ by _____

Date _____ Name(s) of individual(s)

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

5. For certifying a copy of a record:

State of _____

[County] of _____

I certify that this is a true and correct copy of a record in the possession of
_____.

Dated _____

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

44-06.1-20. Notary public commission - Qualifications.

1. An individual qualified under subsection 2 may apply to the secretary of state for a commission as a notary public. The applicant shall comply with and provide the information required by the secretary of state and submit the required application fee of thirty-six dollars.

2. An applicant for a commission as a notary public must:
 - a. Be at least eighteen years of age;
 - b. Be a citizen or permanent legal resident of the United States;
 - c. Be a resident of or have a place of employment or practice in this state or must reside in a county that borders this state and which is in a state that extends reciprocity to a notary public who resides in a border county of this state. If the person resides in a county bordering this state, that person by applying for a commission in this state appoints the secretary of state as the agent for service of process, for all purposes relating to notarial acts, including the receipt of correspondence relating to notarial acts;
 - d. Be able to read and write English; and
 - e. Not be disqualified to receive a commission under section 44-06.1-21.
3. Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the secretary of state.
4. Before issuance of a commission as a notary public, the applicant for a commission shall submit to the secretary of state an assurance in the form of a surety bond or its functional equivalent in the amount of seven thousand five hundred dollars and is subject to approval by the secretary of state. The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty days' notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state not later than thirty days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.
5. On compliance with subsections 1, 2, 3, and 4, the secretary of state shall issue a notary public commission to an applicant for a term of six years, unless sooner removed by the secretary of state. The notary shall post the commission in a conspicuous place in the notary's office or place of employment.
6. A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide a notary public any immunities or benefits conferred by law of this state on public officials or employees.
7. Notwithstanding any other provision of law, a notary public may perform any notarial act as defined in section 44-06.1-01 outside the state as provided in section 47-19-55.
8. The secretary of state shall notify each notary public at least thirty days before the expiration of the notary public's term of the date upon which the notary

public's commission will expire. The notice must be addressed to the notary public at the last-known place of residence.

9. Each notary public issued a commission shall notify the secretary of state by mail within sixty days of any change of address. If a notary fails to notify the secretary of state within sixty days of a change of address, the secretary of state may impose a late fee in the amount of ten dollars. The notary shall pay any late fee imposed by the secretary of state before the renewal of the notary's commission.

44-06.1-21. Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public.

1. The secretary of state may deny or refuse to renew a notary public commission, or may revoke, suspend, or condition a notary public commission for any act or omission that demonstrates an individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:
 - a. Failure to comply with the requirements of this chapter;
 - b. Fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the secretary of state;
 - c. A conviction of the notary public or applicant of any felony or a crime involving fraud, dishonesty, or deceit;
 - d. A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;
 - e. Failure by the notary public to discharge any duty or responsibility required of a notarial officer, whether by any provision in this chapter, any rules of the secretary of state, or any federal or state law;
 - f. Use of false or misleading advertising or representations by the notary public representing that the notary public has duties, rights, or privileges that a notary public does not have;
 - g. Violation by the notary public of any rule of the secretary of state regarding a notary public;
 - h. Denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; or
 - i. Failure of the notary public to maintain an assurance as provided in section 44-06.1-20.
2. If an applicant for a commission as a notary public is denied the commission or a commission is revoked or suspended, the applicant or notary public is entitled to timely notice and hearing in accordance with chapter 28-32. The notice may provide that the person may not perform any notarial acts during the pendency of the revocation proceeding. A notary whose commission is revoked may be denied a new commission for a period of up to six years following the date of revocation.

3. The authority of the secretary of state to deny, suspend, refuse to renew, or revoke a notary public's commission does not prevent the secretary of state or an aggrieved person from seeking and obtaining other remedies provided by law, whether criminal or civil.
4. A notary public who exercises the duties of a notary's office with knowledge that the notary's commission has expired or has been revoked or that the notary is disqualified otherwise or any other person who acts as a notary or performs a notarial act without a lawful notary commission is guilty of an infraction, and, if appropriate, the notary's commission must be revoked by the secretary of state using the procedure under chapter 28-32.
5. The secretary of state may impose a lesser sanction for a violation of any provision of this chapter if determined appropriate by the secretary of state under the pertinent facts and circumstances. A lesser sanction includes imposition of a civil penalty not to exceed five hundred dollars or a letter of reprimand.
6. Any person may file a complaint with the secretary of state seeking denial, revocation, or suspension of a commission issued or to be issued by the secretary of state. The secretary of state shall provide a complaint form. The complainant shall use that form and the form must be verified under oath by the complainant or duly authorized officer of the complainant. If the secretary of state determines that a complaint alleges facts that, if true, would require denial, revocation, or suspension of a commission, the secretary of state shall initiate a hearing without undue delay. If the secretary of state determines a complaint does not state facts warranting a hearing, the secretary of state may dismiss the complaint. The secretary of state may initiate a hearing for denial, revocation, or suspension of a commission on the secretary of state's own motion.
7. Any person whose commission has been revoked or suspended may apply to the secretary of state for reinstatement of the commission or termination of the suspension.

44-06.1-22. (Effective after July 31, 2013) Database of notaries public.

The secretary of state shall maintain an electronic database of notaries public:

1. Through which an individual may verify the authority of a notary public to perform notarial acts; and
2. Which indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records.

44-06.1-23. Prohibited acts.

1. A commission as a notary public does not authorize an individual to:
 - a. Assist in drafting legal records, give legal advice, or otherwise practice law;
 - b. Act as an immigration consultant or an expert on immigration matters;

- e. The date of the verification on oath or affirmation or acknowledgment is not the actual date the document is to be notarized or the verification on oath or affirmation or acknowledgment is undated.
 - f. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
 - g. The notary is falsely or fraudulently signing or notarizing a document, verification on oath or affirmation, or acknowledgment or in any other way is impersonating or assuming the identity of another notary.
 - h. The signature is on a blank or incomplete document.
 - i. In the case of a document drafted in a language other than English, the document is not accompanied by a permanently affixed and accurate written English translation.
 - j. Except as otherwise provided by law:
 - (1) The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;
 - (2) The document is a copy or certified copy of an instrument entitled by law to be recorded; or
 - (3) The document is a copy or certified copy of a public record containing an official seal.
 - k. The notary did not obtain satisfactory evidence of the identity of the signer, unless the signer is personally known to the notary.
7. A notary public may not make or purport to make any certified copy of a vital record, a recordable instrument, or a public record containing an official seal as described in subdivision j of subsection 6.
8. A notary public must affix the notary's seal to each verification on oath or affirmation or acknowledgment at the time of performing the notarial act.

44-06.1-24. Validity of notarial acts.

Except as otherwise provided in this chapter, the failure of a notarial officer to perform the duties or meet the requirements specified in this chapter does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on other laws of this state or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform the act.

44-06.1-25. Rules.

The secretary of state may adopt rules to implement the provisions of this chapter. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the

implementation or application of a specific technology or technical specification. The rules may include:

1. Provisions prescribing the manner of performing notarial acts regarding tangible and electronic records.
2. Provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident.
3. Provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures.

44-06.1-26. Notary public commission in effect.

A commission as a notary public in effect on the effective date of this Act continues until its date of expiration. A notary public who applies to renew a notary public commission after the effective date of this Act shall comply with the provisions of this chapter. A notary public, in performing notarial acts after the effective date of this Act, shall comply with the provisions of this chapter and is subject to refusal to renew the notary public's commission or revocation or suspension of the notary public's commission under this chapter.

44-06.1-27. Name change.

A notary who has legally changed the notary's name shall submit to the secretary of state a rider to the notary's surety bond stating both the old and new names, the effective date of the new name, and a ten dollar fee within sixty days of the name change. Upon receipt of the rider and fee, the secretary of state shall issue a certificate of authorization that a notary public may use to obtain a new stamping device. Once the authorization is on file, the secretary of state shall issue a commission with the notary's new name. After notification to the secretary of state of the name change and until a new stamping device is obtained, the notary may continue to use the old stamping device but must sign any notarial certificate substantially as follows:

Notary public North Dakota

Formerly known and commissioned as

My commission expires

Notary Seal

44-06.1-28. Fees to be charged for notarial acts - Penalty.

A notary public is entitled to charge and receive not more than five dollars per notarial act. A notary who charges a fee exceeding that amount is guilty of an infraction. It is an infraction for any person other than the notary public to impose or collect any monetary fee, charge, or commission in connection with the notarization of any document. A notary may charge a travel fee when traveling to perform a notarial act if:

1. The notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
2. The notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee and neither specified nor mandated by law.

44-06.1-29. Savings clause.

The provisions of this chapter do not affect the validity or effect of a notarial act performed before the effective date of this Act.

44-06.1-30. Relation to Electronic Signatures in Global and National Commerce Act. The provisions of this chapter modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but do not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

SECTION 4. AMENDMENT. Section 44-08-06 of the North Dakota Century Code is amended and reenacted as follows:

44-08-06. Dimensions of seal of court or officer.

Except as otherwise provided in ~~section 44-06-04~~ by law relating to notary seals/stamps, upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, must be surrounded by a border, and be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

SECTION 5. AMENDMENT. Section 47-19-18 of the North Dakota Century Code is amended and reenacted as follows:

47-19-18. Deputies may take acknowledgments.

When any officer mentioned in ~~sections~~ section 47-19-14, ~~47-19-14.1, and 47-19-14.2~~ is authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of the principal as deputy, or by such deputy as deputy.

SECTION 6. REPEAL. Chapter 44-06 and sections 47-19-14.1, 47-19-14.2, 47-19-14.3, 47-19-14.4, 47-19-14.5, 47-19-14.6, 47-19-14.7, and 47-19-14.8 of the North Dakota Century Code are repealed.

Approved April 18, 2011
Filed April 18, 2011

CHAPTER 335

SENATE BILL NO. 2065

(Government and Veterans Affairs Committee)
(At the request of the State Board of Higher Education)

AN ACT to amend and reenact subsection 1 of section 44-08-04 of the North Dakota Century Code, relating to officer and employee claims for meals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals that are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. If a higher education athletic team or other organized institution organization group meal is attended at the request of and on behalf of the institution, actual expenses for the entire group, including coaches, trainers, and other employees, may be paid or submitted for payment on a team or group travel expense report; subsection 2 does not apply; and officers and employees are not required to document individual expenses or submit individual travel reimbursement vouchers. Reimbursement is allowed only for overnight travel or other travel, away from the normal place of employment, for four hours or more. Verification of expenses by receipt is required only for lodging expenses.

Approved April 19, 2011
Filed April 19, 2011

¹²¹ Section 44-08-04 was also amended by section 1 of House Bill No. 1426, chapter 336.

CHAPTER 336

HOUSE BILL NO. 1426

(Representatives Boehning, Heller, Karls)
(Senators Miller, Wardner)

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to travel reimbursement rates for state employees and officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²² **SECTION 1. AMENDMENT.** Subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. For travel within the state, the following rates for each quarter of any twenty-four-hour period must be used:
 - a. First quarter is from six a.m. to twelve noon and the sum must be ~~five~~six dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be ~~seventy-nine~~nine dollars ~~and fifty cents~~.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be ~~twelve~~fifteen dollars ~~and fifty cents~~.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed an amount established by policy by the director of the office of management and budget plus any additional applicable state or local taxes. The director shall establish a policy to set the lodging reimbursement at an amount equal to ninety percent of the rate established by the United States general services administration for lodging reimbursement in this state. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

Approved April 25, 2011
Filed April 25, 2011

¹²² Section 44-08-04 was also amended by section 1 of Senate Bill No. 2065, chapter 335.

CHAPTER 337

HOUSE BILL NO. 1251

(Representatives Koppelman, Wieland, Guggisberg)
(Senators J. Lee, Sorvaag, Schneider)

AN ACT to create and enact a new section to chapter 44-08 and a new section to chapter 54-40.3 of the North Dakota Century Code, relating to cooperative agreements among criminal justice agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

Interagency cooperation.

1. Any appointive or elective agency or office of peace officers, as defined in section 12-63-01, may establish policies and enter agreements with other agencies and offices and a state or local criminal justice agency of this state may establish policies and procedures or enter agreements with other criminal justice agencies of this state to:
 - a. Assist other state and local criminal justice agencies; and
 - b. Exchange the criminal justice agency's peace officers with peace officers of another criminal justice agency on a temporary basis.
2. A criminal justice agency may establish policies for assisting probation and parole officers who are supervising probationers or parolees in the criminal justice agency's jurisdiction.
3.
 - a. When a peace officer provides assistance to another peace officer within the scope of the policies of the peace officer's employing criminal justice agency, the assistance must be within the line of duty and course of employment of the peace officer rendering the assistance.
 - b. When a peace officer acts on behalf of another agency or office within the scope of an exchange agreement entered under subsection 1, the peace officer's actions are within the peace officer's line of duty and course of employment to the same extent as if the peace officer had acted on behalf of the peace officer's employing agency.
4. This section does not extend or enlarge the duties or authority of any peace officer or any other law enforcement agent except as provided in this section.

SECTION 2. A new section to chapter 54-40.3 of the North Dakota Century Code is created and enacted as follows:

Joint exercise of police power.

A state or a local criminal justice agency of this state, with the approval of its governing body, may enter an agreement in the manner provided in section 54-40.3-01 with another state or a political subdivision of another state, for the joint exercise of peace officer duties. A peace officer acting under an agreement pursuant to this section must be licensed under chapter 12-63, or if the peace officer is from another state, the officer must be licensed or certified by the other state's licensing or certifying authority. A peace officer acting under an agreement pursuant to this section has full peace officer authority in any jurisdiction that is a party to the agreement. Before an agreement entered under this section is effective, the governing body for each criminal justice agency must have approved the agreement and the attorney general must have determined the agreement is legally sufficient.

Approved April 25, 2011
Filed April 25, 2011