

TITLE 1
General Provisions
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 1. Bills primarily affecting other titles may also affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1104 adds primary elections to the list of elections at which service of civil process on individuals is prohibited within 100 feet of the polling place. The bill changes the point from which the 100-foot limit is measured from any entrance to the polling place to the outermost entrance of the building or facility in which the polling place is located.

TITLE 2
Aeronautics
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted which primarily affected North Dakota Century Code Title 2. Bills primarily affecting other titles may also affect this title, but those bills are not summarized in this memorandum.

TITLE 3
Agency
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted that primarily affected North Dakota Century Code Title 3. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

TITLE 4

Agriculture

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 4. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

AGRICULTURAL COMMODITIES

House Bill No. 1518 raises the wheat tax by five mills, requires that at least three mills be used to pay debts incurred by the Wheat Commission for legal services, and requires that at least two mills be used to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales.

Senate Bill No. 2147 authorizes the Agriculture Commissioner to develop a source-verified and process-verified beef marketing program and authorizes the Agricultural Products Utilization Commission to administer grants related to nature-based tourism and to provide a technical assistance grant program for value-added businesses. The bill also directs the Bank of North Dakota to establish and administer a livestock loan guarantee program, which will expire June 30, 2009.

Senate Bill No. 2248 provides that each applicant for a license to grow industrial hemp for commercial purposes must undergo a nationwide criminal history check.

Senate Bill No. 2114 provides that if the dairy commissioner reinspects a dairy facility after the facility has had a permit suspension, a reduction in grade, or a finding of unsanitary conditions, the facility must pay \$75 for the reinspection.

House Bill No. 1492 authorizes the North Dakota State University Main Research Center to conduct baseline research regarding industrial hemp and other alternative industrial use crops. The bill also authorizes the center to collect feral hemp seed stock and to develop adopted strains of industrial hemp.

House Bill No. 1247 changes the county configuration of the dry bean districts.

Senate Bill No. 2403 changes the county configuration of the barley districts.

Senate Bill No. 2236 provides that if a grower sells corn to a person who is not a designated handler, the grower must forward the assessment to the Corn Utilization Council.

AGRICULTURAL BOARDS AND COMMISSIONS

House Bill No. 1272 establishes additional eligibility criteria for individuals seeking positions on the Wheat Commission and provides that a member's position may be declared vacant if the member fails to attend two consecutive commission meetings. The bill also establishes eligibility criteria for individuals seeking positions as county representatives.

Senate Bill No. 2156 repeals the requirement that the agricultural promotion groups be collocated.

House Bill No. 1519 authorizes the Agricultural Products Utilization Commission to administer an agricultural technologies grant program.

House Bill No. 1264 sets forth the manner in which vacancies on the State Board of Agricultural Research and Education are to be filled and it also provides that an individual is eligible to serve two full terms after completing the unexpired term for which the individual was appointed.

Senate Bill No. 2326 provides that all seed potatoes imported into this state must be accompanied by an official grade certificate, a health certificate, and any other document or certificate required for the importation of seed potatoes by the state, province, territory, or country in which the potatoes originated. The bill carries an emergency clause.

Senate Bill No. 2043 removes the requirement that an individual file a bond prior to beginning employment as the director of the Milk Marketing Board.

Senate Bill No. 2044 updates statutory language pertaining to the State Seed Department and reconciles that language with the Recommended Uniform State Seed Law. The bill provides compensation to members of the State Seed Commission and allows for the regulation of seed sold by brand name.

ETHANOL

Senate Bill No. 2270 provides \$900,000 in production incentives to the ethanol plant in Grafton and provides \$450,000 in production incentives to the ethanol plant in Walhalla. The bill also makes both plants eligible for countercyclical payments provided the plants increase their respective production by the lesser of 10 million gallons or 50 percent.

Senate Bill No. 2018 creates an office of renewable energy and energy efficiency within the Department of Commerce and directs that the office replace the Agricultural Products Utilization Commission in providing ethanol production incentives.

APPROPRIATIONS

House Bill No. 1015 sets the salary of the Agriculture Commissioner at \$72,669 through June 30, 2006, and at \$75,576 thereafter. It also provides that the increase in the wheat levy imposed by House Bill No. 1518 is to take effect July 1, 2005.

House Bill No. 1009 appropriates \$4,493,456 from the state general fund to the Agriculture Commissioner. Included in that amount is \$2,178,688 for the State Board of Animal Health and \$25,000 for the Crop Harmonization Board. The bill also raises the compensation of soil conservation district supervisors from \$25 to \$62.50.

Senate Bill No. 2022 appropriates \$5,909,117 in special funds derived from income to the State Seed Department.

Senate Bill No. 2020 appropriates \$15,204,299 in state general funds to the North Dakota State University Extension Service, \$905,098 in state general funds to the Northern Crops Institute, \$800,001 in state general funds to the Upper Great Plains Transportation Institute, \$30,525,488 in state general funds to the Main Research Center, and \$8,327,741 in state general funds to the remaining research centers.

Senate Bill No. 2009 appropriates \$615,000 from the state general fund to the State Fair Association.

MISCELLANEOUS

Senate Bill No. 2277 prohibits a political subdivision from adopting or continuing in effect any ordinance, resolution, initiative, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. The bill does not extend to city zoning ordinances.

Senate Bill No. 2355 requires a nonresident who seeks certification as a pesticide applicator to designate the North Dakota University Extension Service or its designee as the agent upon whom service of process may be filed.

House Bill No. 1094 provides that if furs, skins, or specimens of animals that are injurious to livestock are sold, up to \$15,000 of the net proceeds must be used by the United States Department of Agriculture Wildlife Services to fund its program activities in a manner that benefits the state's livestock producers.

Senate Bill No. 2280 removes a cross-reference to a section that is repealed in amendments relating to the control and eradication of weeds and pests and clarifies the duties of county and city officials with respect to the control or eradication of weeds and pests.

TITLE 5

Alcoholic Beverages

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 5. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1383 provides a general definition in Title 5 of 21 years of age to mean after 3:00 a.m. on the date of 21 years after a person's date of birth. The bill provides for a closing time of 2:00 a.m. for alcoholic beverage retailers unless otherwise determined by the local governing body.

Senate Bill No. 2067 provides that a person is not 21 years of age until 8:00 a.m. on that person's 21st birthday for the purposes of that person using alcoholic beverages or remaining in the licensed premises of an alcoholic beverage retailer.

House Bill No. 1413 allows a person under 21 years of age who is an independent contractor engaged in contract work and who is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages to enter the licensed premises of an alcoholic beverage retailer and for the retailer to allow that person to remain in the premises.

Senate Bill No. 2234 allows the on-sale of alcoholic beverages on Thanksgiving Day.

Senate Bill No. 2179 provides for an increasing sliding scale of ingredients up to a majority which must be grown and produced in this state for a domestic winery during the first six years of licensure. The bill removes the requirement of registering labels of each type or brand of wine produced with the Tax Commissioner. The bill increases the amount of wine that may be sold from 10,000 to 25,000 gallons. The bill increases the number of special events permits that may be issued by the Tax Commissioner from 5 to 25 per calendar year.

House Bill No. 1325 allows for a person in this state to import into this state wine for personal use without any state tax, fees, or other charges, if the state from which the wine is imported allows a reciprocal privilege. The bill allows a licensed winery, wholesaler, or retailer in this state to ship wine for personal use to a resident of another state, if the other state allows a resident of this state to receive wine sent from that state without payment of additional tax, fees, or charges. The bill requires that the shipping container be labeled to indicate that the wine may not be delivered to an individual that is under 21 years of age. A person in another state may not ship more than 27 liters of wine per month to a person in this state. The bill excludes shipments made by a domestic winery in this state from volume limitations for domestic wineries.

House Bill No. 1159 creates and requires a supplier license for a person that sells or ships alcoholic beverages to a licensed wholesaler. The bill provides for a licensed supplier to provide reports to the Tax Commissioner and the penalties for delinquent reports and false or misleading reports. The bill increases the dollar amount a wholesaler may provide a retailer from \$50 to \$150 per tap per calendar year for beer containers and equipment, from \$100 to \$400 for an outside sign, and \$250 to \$500 for point-of-sale items per retail account. The bill allows the Tax Commissioner to inspect the books and premises of a domestic winery and

provides for a statute of limitations for delinquent taxes of three years, unless the tax due was 25 percent or more of the amount reported on the return, then six years, and no time limitation if the delinquency is due to fraudulent intent or a willful attempt of the taxpayer to evade the tax.

TITLE 6

Banks and Banking

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 6. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to banks and banking may be classified into seven subject areas: Bank of North Dakota; banks; credit unions; records and confidentiality of information; programs; Municipal Bond Bank; and miscellaneous.

BANK OF NORTH DAKOTA

Senate Bill No. 2032 addresses the Bank of North Dakota's authority to invest funds in North Dakota alternative and venture capital investments and early-stage capital funds. The bill increases the maximum amount of investment from \$5 million to \$10 million; authorizes the Bank to contract with a third party, such as the North Dakota Development Fund, Incorporated, to manage these funds; and extends the expiration date of this investment authority from August 1, 2007, to August 1, 2009.

Senate Bill No. 2130 clarifies the authority of the Industrial Commission to set the compensation for the members of the Advisory Board of Directors to the Bank of North Dakota.

BANKS

House Bill No. 1140 allows a bank organized under the laws of another state, a domestic or foreign bank holding company, or their affiliates, to use and display in connection with its business such words as "bank," "banker," or "banking" and allows a state bank or trust company, or their affiliates, authorized to engage in trust activities under the laws of another state to use and display such words as "trust" or "trust company."

House Bill No. 1164 provides if a bank desires to maintain and operate a facility separate and apart from its banking house, the bank is to submit an application to the commissioner of Financial Institutions, instead of the State Banking Board; however, merging banks that have been approved by the State Banking Board are not required to submit such an application to the commissioner; changes the amount that banks may invest in a small business investment company, from 2 percent of the bank's capital and surplus to an amount to be determined by the State Banking Board, not to exceed 10 percent of the bank's capital and surplus; and modifies the loan limitation of a state banking association.

Senate Bill No. 2175 revises bank requirements for loans on real estate. The bill provides for a real estate loan of more than \$250,000, an appraisal must be conducted by a licensed or certified appraiser if required by the federal Financial Reform, Recovery, and Enforcement Act of 1989; for a real estate loan that does not require an appraisal by a licensed or certified appraiser, the bank shall obtain an evaluation of collateral; and for a real estate loan the commissioner of Financial Institutions may require an appraisal by a licensed or certified appraiser as necessary to address safety and soundness concerns.

Senate Bill No. 2165 prohibits the unauthorized use of a name or logo of any bank, trust company, savings association, or savings bank. The bill provides a civil and criminal penalty for this unauthorized use.

CREDIT UNIONS

House Bill No. 1163 provides for a \$300 application fee for two or more credit unions to merge; exempts from the limitation of the words "credit union" the North Dakota Credit Union League, any chapter, affiliate, or subsidiary of the league, and any political action committee formed by a credit union formed under North Dakota or federal law; increases from two to four times per year the frequency of credit union reports to the commissioner of Financial Institutions and modifies the format in which these reports are required to be provided; provides a designated representative of a credit union's board of directors may determine interest rates on loans and deposits; provides an immediate family member of the president, general manager, or chief executive officer of a credit union may not serve on the board of directors of that credit union and a majority of the board of directors of a credit union may not be immediate family members of each other; expands credit union volunteer immunity from liability; increases the limit for unsecured loans made by credit unions; increases the amount that a director of a credit union may borrow; removes the terminology regarding credit union reserve funds and replaces it with a requirement of an allowance for loan and lease loss account; modifies how a credit union may pay a dividend; expands the prohibition of a person to libel or slander a bank to also prohibit libel or slander of a credit union; and repeals the laws regarding credit union share scaledown. Additionally, the bill modifies the law regarding nonsufficient fund checks, providing if a holder of a nonsufficient fund check uses the automated clearinghouse network to collect collection fees or costs, the holder shall comply with the network's requirements.

Senate Bill No. 2263 revises the credit union geographic field of membership provisions, grandfathering in credit union fields of membership approved before January 1, 2005. The bill provides that a credit union's geographic field of membership is limited to within the 75-mile radius of the home office of the credit union; in the case of a merger between credit unions, the geographic field of membership may be expanded to include the geographic field of membership of both credit unions; and a credit union may not establish and operate a new branch office that is outside the credit union's field of membership. The bill provides for proceedings concerning credit union expansions. The procedures adopted by the State Credit Union Board must allow for the opportunity for an interested person to obtain a hearing and to intervene as a party to the proceeding.

RECORDS AND CONFIDENTIALITY OF INFORMATION

House Bill No. 1150 expands the exclusions for which the general disclosure of customer information laws applicable to the Bank of North Dakota do not apply by adding as an exclusion the name of the actual program under which a customer has obtained approval for Bank nonpersonal financing or security.

House Bill No. 1168 extends the law addressing confidentiality of financial institution records obtained by the commissioner of Financial Institutions and the state Department of Financial Institutions to include records obtained from credit unions and other entities licensed by the Department of Financial Institutions.

House Bill No. 1203, as part of a bill that provides for business incentive accountability, provides the duty of confidentiality and disclosure of customer information law does not apply to business incentive recipient reports and grantor reports.

PROGRAMS

House Bill No. 1131 increases from \$150,000 to \$250,000 one of the maximum amounts used to calculate the amount of participation interest the Bank of North Dakota may purchase under the financial assistance for family farmers program. The bill also increases from \$200,000 to \$300,000 the maximum net worth limitations for an applicant for a loan under the program.

House Bill No. 1132 increases from \$200,000 to \$250,000 one of the maximum amounts used to calculate the amount of participation interest the Bank of North Dakota may purchase under the family farm survival program.

House Bill No. 1133 modifies the definition of "business" for purposes of eligibility under the partnership in assisting community expansion program, expanding the definition from allowing for targeted service industries as defined by the Bank of North Dakota to allowing for targeting industries as defined by the Bank.

Senate Bill No. 2147 requires the Bank of North Dakota to establish and administer a livestock loan guarantee program to expand livestock feeding in this state. The program expires July 1, 2009.

Senate Bill No. 2217 creates the biodiesel partnership in assisting community expansion fund to buy down the interest rate on loans to qualified biodiesel production facilities. The Bank of North Dakota is directed to administer the fund.

MUNICIPAL BOND BANK

Senate Bill No. 2074 renames the Municipal Bond Bank to the Public Finance Authority and allows the authority to enter administrative agreements with state agencies to issue bonds and other evidences of indebtedness on behalf of a state agency.

Senate Bill No. 2276 expands the powers of the Municipal Bond Bank to include the purchase of qualified small issue bonds and the issuance of industrial development revenue bonds under the state's Municipal Industrial Development Act.

MISCELLANEOUS

House Bill No. 1174, as part of a bill that repeals the law relating to licensure of check sellers and creates new law relating to licensure of money transmission businesses, updates cross-references contained in the financial institutions regulatory fund deposit sources law to update a reference to the repealed law and to add as a source of funds those received under the deferred presentment law.

House Bill No. 1340 broadens the scope of where a subsidiary trust company may establish and maintain an office, providing the regulatory process by which a subsidiary trust company obtains authority to establish and maintain an office is the same as applies to trust companies.

Senate Bill No. 2124 removes the authority of an annuity, safe deposit, surety, and trust company to loan money.

TITLE 7
Building and Loan Associations
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted which primarily affected North Dakota Century Code Title 7. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

TITLE 8
Carriage
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 8. Bills primarily affecting other titles may also affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1065 reenters this state into the Midwest Interstate Passenger Rail Compact for which this state's membership expired on August 1, 2003. The bill provides for cooperation among Midwestern states for the development of high-speed rail passenger service in the Midwest.

TITLE 9
Contracts and Obligations
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 9. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

Senate Bill No. 2239 provides a definition of and termination terms of a wind option agreement, which is a contract in which a property owner gives another the right to produce energy from wind on that property.

TITLE 10

Corporations

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 10. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to corporations may be classified in these subject areas: business entities and miscellaneous.

BUSINESS ENTITIES

House Bill No. 1273, as part of a rewrite of the limited partnership law, updates statutory cross-references in the business corporations law, limited liability company law, and nonprofit corporations law.

House Bill No. 1391 provides for extensive grammatical changes, technical clarifications, and substantive changes to the laws relating to business corporations, professional organizations, limited liability companies, and nonprofit corporations. The substantive changes address a variety of matters, including establishing knowledge or notice, amendments to articles of incorporation, electronic ballots, rights of shareholders, mergers, conversions, fees, filing of records with the Secretary of State, and name changes.

Senate Bill No. 2116 provides for changes to the law relating to cooperatives, including clarification of what it means to have a record filed with the Secretary of State, recognition of electronic records and electronic signatures, the amount of fees and the circumstances under which certain fees will not be refundable, and clarification that a Social Security number or federal tax identification number included in a filing with the Secretary of State is confidential.

Senate Bill No. 2366, as part of a rewrite of the physical therapy licensure laws, updates a physical therapy licensure statutory cross-reference in the professional organizations law.

MISCELLANEOUS

House Bill No. 1060 addresses community development corporations, decreasing from 3 to 1 the minimum number of banks required for formation of a community development corporation and decreasing from 15 to 5 the minimum number of members on a community development board of directors.

House Bill No. 1176 provides for extensive updates to the securities laws, including inclusion of some of the provisions of the Uniform Securities Act of 2002.

Senate Bill No. 2032 increases from \$5 million to \$10 million the maximum amount the Development Fund, Inc., may borrow from the Bank of North Dakota for the purpose of investing in alternative and venture capital investments and early-stage capital funds; extends the expiration date of the Development Fund's alternative and venture capital and early-stage capital fund investment program from August 1, 2007, to August 1, 2009; authorizes the Development Fund to provide management services for the Bank of North Dakota's alternative and venture capital investments and early-stage capital funds; and, effective August 1, 2007, repeals the laws relating to venture capital corporations and the Myron G. Nelson Fund, Inc.

Senate Bill No. 2138 adds the president of the North Dakota Stockmen's Association to the advisory committee to consider acquisition of farmland or rangeland by a nonprofit organization and clarifies that a member of the advisory committee may allow a designee to serve in the member's place.

June 2005

TITLE 11

Counties

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 11. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to counties may be classified in these subject areas: powers and duties of counties, county officers, and recreation service districts.

POWERS AND DUTIES OF COUNTIES

House Bill No. 1043 provides that a cap provided by county home rule for sales taxes on a single purchase will be replaced in 2006 with a refund provision requiring the retailer to collect the full amount of county sales taxes and allowing the purchaser to claim a refund from the Tax Commissioner as if the cap remained in place. The bill also provides that any taxes imposed under a county home rule charter on farm machinery, farm irrigation equipment, and farm machine repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

House Bill No. 1279 authorizes the board of county of commissioners of a county to establish institutional controls that address environmental concerns with the State Department of Health. The bill provides that institutional controls are restrictions on the use and management of real property that contain or prevent migration of regulated substances or other pollution or contamination, or protect receptors from exposure or the threat of exposure to regulated substances or other pollution or contamination. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on March 31, 2005.

Senate Bill No. 2173 allows a board of county commissioners to authorize a payment of a sum not to exceed \$45 per day for time actually spent in transacting the business of a county planning commission, in addition to any salaries members of the planning commission receive from any other source.

House Bill No. 1197 changes the deadline for county budget preparation from the first of October of each year to the October meeting of the board of county commissioners.

COUNTY OFFICERS

Senate Bill No. 2142 increases the fee a sheriff may charge for service of process, making a return of not-found, for taking and filing a bond, for advertising a sale, for making a deed to land sold on execution, and for issuing a certificate of redemption from \$10 to \$20. The bill increases the fee a sheriff may charge for levying or executing any writ from \$25 to \$40, increases the fee for calling an inquest to appraise property from \$10 to \$25, and increases the fee for selling real or personal property under foreclosure from \$50 to \$75. The bill also increases the fee an appraiser is entitled to receive for appraising property at the request of a sheriff from \$50 to \$100. The bill increases the commission a sheriff may collect on behalf of the county on the sale of real or personal property from \$50 on the first \$1,000 to \$75 on the first \$1,000. The bill increases the allowances a sheriff may charge on behalf of the county when the person in whose favor an execution or order of sale has been issued by the court bids

in the property sold under the execution from \$20 to \$40 when the amount for which the property is bid does not exceed \$1,000 and from \$30 to \$75 when the amount for which the property is bid exceeds \$1,000. The bill increases the fee for a retail fireworks license from \$5 to \$20.

Senate Bill No. 2024 removes the June 30, 2005, expiration date for the document preservation fund and continues the additional fees imposed for the purpose of funding the document preservation fund. The bill requires each recorder, before March 1 of each even-numbered year, to prepare a report that specifies how the county used the county's document preservation funds during the preceding two fiscal years, how the county's use of the document preservation funds has furthered the goal of document preservation, and the county's general strategic plans for document preservation. The bill requires that the county reports must be submitted to the North Dakota Association of Counties for compilation and submittal to the Legislative Council before April 1 of each even-numbered year.

House Bill No. 1175 requires the county auditor to determine whether there is an unsatisfied lien for homestead credit for special assessments against a property for which a deed, contract for deed, or patent is presented for transfer. The bill also provides that the county auditor is responsible for ascertaining whether there are delinquent taxes or special assessments against the property or whether the land has been sold for taxes. The bill prohibits a recorder from recording any deed for property in which the county auditor has determined that there is an unsatisfied lien.

Senate Bill No. 2180 provides that a personal representative's deed or any document terminating a life estate may be recorded by the recorder without an auditor's certificate.

RECREATION SERVICE DISTRICTS

Senate Bill No. 2237 reduces from 50 to 40 the number of privately owned seasonal homes or cottages required for the establishment of a recreation service district.

TITLE 12

Corrections, Parole, and Probation

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 12. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1192 authorizes the licensure of part-time peace officers. The bill provides that a criminal justice agency may appoint part-time licensed peace officers to supplement and assist licensed peace officers.

House Bill No. 1473 provides for the creation of the Commission on Alternatives to Incarceration. The bill provides that the commission is to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. The bill became effective April 13, 2005.

House Bill No. 1484 provides that criminal history record information disseminated by the Bureau of Criminal Investigation must contain information of reportable events that occurred within three years preceding the request. The bill changed this time period from one year to three years. The bill also provides any person offering criminal background checks for compensation to screening applicants seeking a position in which the applicant is responsible for providing care for a vulnerable adult, the person must use the bureau's criminal investigation statewide criminal history data base in addition to any other compiled information.

Senate Bill No. 2015 provides that a grade one correctional facility that has a contract with the Department of Corrections and Rehabilitation to confine female inmates who have been sentenced to the legal and physical custody of the department may confine the female inmate for more than one year in accordance with the terms of the contract. The bill also provides that a female inmate who has been sentenced to the legal and physical custody of the department and who is confined in a grade one correctional facility under a contract with the department has the same rights to sentence reduction for good and meritorious conduct and to pardon and parole as an inmate confined in a department Prisons Division facility.

Senate Bill No. 2125 authorizes the Parole Board to establish parole expiration dates in all parole cases. The bill provides that the Parole Board may not establish an initial parole expiration date that is earlier than the expiration date of the parolee's court-imposed sentence, less any sentence reduction. The bill also provides that the Parole Board may not terminate supervision of a parolee who has a life sentence with opportunity for parole earlier than five years from the established date of release on parole.

Senate Bill No. 2148 relates to the sentencing of offenders to the Department of Corrections and Rehabilitation. The bill provides that offenders are to be sentenced to the legal and physical custody of the Department of Corrections and Rehabilitation rather than to a specific institution or to the warden. The bill also provides that the department may allow an offender who is between 18 and 20 years of age to remain at the Youth Correctional Center if the department determines that it is in the best interests of the department and it is not contrary to safety interests of the other residents or the general public. The bill contains provisions relating to compensation of offenders, the awarding of good time, and eligibility for release programs.

The bill provides that the director of the department and the Parole Board may grant short leaves to offenders.

Senate Bill No. 2248 relates to criminal history record information. The bill imposes a \$15 fee for each state record check. The bill increases from \$3 to \$5 the record check fee for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors. The bill also imposes a \$5 fee for each record check conducted on a volunteer providing services for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of vulnerable elderly adults and a \$15 fee for processing fingerprints necessary for a nationwide criminal history record check. The bill waives the fees for a criminal justice agency or court. The bill also requires certain state agencies and entities to require petitioners for adoption applicants, and employees to consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, employment, or adoption.

TITLE 12.1

Criminal Code

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 12.1. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to the criminal code may be classified in these areas: new offenses or changes in penalties; sexual offenses and offenders; sentencing; and miscellaneous.

NEW OFFENSES OR CHANGES IN PENALTIES

House Bill No. 1051 provides that an individual who willfully defrauds a urine test that is designed to detect the presence of a chemical substance or a controlled substance is guilty of a Class A misdemeanor. The bill also provides that an individual who willfully manufactures, advertises, sells, or distributes any substance or device that is intended to defraud a urine test designed to detect the presence of a chemical substance or a controlled substance is guilty of a Class A misdemeanor.

House Bill No. 1211 provides that a person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual. The bill provides that the offense is a Class B felony if the value of the credit, money, goods, or services obtained exceeds \$1,000 in value, otherwise the offense is a Class C felony, and a subsequent offense is a Class A felony. The bill also provides that prosecution for a violation must be commenced within six years after the discovery by the victim of the facts constituting the violation.

House Bill No. 1262 provides that a prior conviction for simple assault, assault, or aggravated assault constitutes a prior offense for purposes of the enhanced penalty under North Dakota Century Code Section 12.1-17-01.

Senate Bill No. 2251 provides that a person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual. The bill provides that the offense is a Class B felony if the value of the credit, money, goods, or services obtained exceeds \$1,000 in value, otherwise the offense is a Class C felony, and a second or subsequent offense is a Class A felony. The bill also provides that prosecution for a violation must be commenced within six years after the discovery by the victim of the facts constituting the violation.

SEXUAL OFFENSES AND OFFENDERS

House Bill No. 1061 requires an individual who is required to register for a sexual offense or an offense against a child to submit a sample of blood or other body fluids for inclusion in a centralized data base of DNA identification records. The bill also requires the individual periodically to confirm certain information required by law.

House Bill No. 1293 provides that it is a Class B misdemeanor if an individual hires or offers or agrees to hire another individual with the intention of engaging in sexual activity.

House Bill No. 1313 provides for a mandatory five-year period of supervised probation to be served after incarceration for a felony sexual offense. The bill also provides for increased penalties for gross sexual imposition and continuous sexual abuse of a child.

House Bill No. 1418 provides that an individual is guilty of prostitution, a Class B misdemeanor, if the individual agrees to engage in sexual activity with another for money or other items of pecuniary value.

SENTENCING

House Bill No. 1162 provides that when an individual whose license has been suspended for nonpayment of child support is convicted of engaging in activity for which the license was required, the court is required to impose, as a condition of the sentence, that the individual pay restitution in the amount of \$250 or a higher amount as set by the court. Any restitution ordered must be paid to the state disbursement unit for distribution under North Dakota Century Code Section 14-09-25.

House Bill No. 1409 provides that when restitution is imposed as a sentence or condition of probation, the restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property.

House Bill No. 1505 provides that except as provided in North Dakota Century Code Section 62.1-02-01, which relates to the possession of firearms, an individual who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor.

MISCELLANEOUS

House Bill No. 1121 codifies the 2000 revision of the Uniform Parentage Act. The bill changes the term "assisted conception" to "assisted reproduction" and changes a cross-reference to reflect creation of the new chapter.

House Bill No. 1139 provides that in a parole or pardon matter before the Parole Board, the Governor or the Pardon Advisory Board, victim testimony, or a victim statement is a confidential record and may be disclosed only to the Parole Board, the Governor, the Pardon Advisory Board, or their authorized representative.

Senate Bill No. 2343 removes a cross-reference North Dakota Century Code Chapter 23-06.4, relating to treatment declarations, which is repealed by the bill.

Senate Bill No. 2363 exempts gaming equipment or devices used for research purposes by an institution of higher education from the definition of gambling.

TITLE 13

Debtor and Creditor Relationships

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 13. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1141 clarifies that for purposes of the collection agency licensure and regulation laws, the term collection agency does not include attorneys at law who are licensed to practice in North Dakota, credit unions, and agencies of a state or of the federal government.

House Bill No. 1172 provides the collection agency licensure requirements and regulations apply to a collection agency if the agency is attempting to collect child support and either the child support debtor or creditor resides within North Dakota, if the child support debt arises under an order issued by a court of North Dakota, or if a record of the child support debt is maintained on the statewide automated data processing system.

House Bill No. 1127 addresses licensure application and renewal provisions and fees for consumer finance loan businesses, money brokers, collection agencies, and deferred presentment service providers.

House Bill No. 1321 addresses deferred presentment services, defining the term "customer"; allowing for deferred presentment to occur through authorized transfers or withdrawals, electronically or otherwise; allowing Internet-initiated transactions; requiring the commissioner of the Department of Financial Institutions to administer a data base in which deferred presentment transactions are recorded; and increasing from \$500 to \$600 the maximum aggregate value of all outstanding obligations from any one customer to any other deferred presentment service provider.

House Bill No. 1174 provides a person may not engage in the business of money transmission unless licensed by the Department of Financial Institutions.

Senate Bill No. 2204 provides the \$25 maximum on late charges on accounts receivable for medical services only applies to hospitals and provides a medical services provider may not charge or collect a credit service charge on money due on a revolving charge account.

TITLE 14

Domestic Relations and Persons

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 14. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to domestic relations and persons may be classified in these subject areas: domestic violence; discrimination; child support; marriage and divorce; and parent and child.

DOMESTIC VIOLENCE

House Bill No. 1348 requires the law enforcement officer, in a domestic violence situation, to evaluate each complaint separately to determine if either party acted in self-defense. If self-defense is not a factor, the bill provides that to determine whether to seek an arrest warrant or to pursue further investigation, the officer must determine which party has engaged in the most immediately significant aggression by considering certain factors, including the comparative severity of injuries involved and the likelihood of future harm. The bill also provides that if an officer determines through the course of an investigation that one of the individuals has engaged in the most immediately significant aggression, the report must include the name of that individual and a description of the evidence that supports the findings.

DISCRIMINATION

House Bill No. 1130 provides that it is a discriminatory practice for an individual to engage in any form of threats, retaliation, or discrimination against an individual who has opposed any unlawful discriminatory practice or who, in good faith, has filed a complaint, testified, assisted, or participated in an investigation, proceeding, hearing, or litigation.

House Bill No. 1158 provides that in a Labor Department administrative hearing, the Attorney General, at the request of and on behalf of the department, may participate in and advocate in favor of the department's finding of probable cause. The bill provides that the aggrieved person may be represented by private counsel. The bill also provides that if a claim filed by an aggrieved person proceeds to a hearing, the aggrieved person is a party in the hearing. The bill provides that neither the Labor Department nor the Attorney General may represent an aggrieved person at the hearing.

Senate Bill No. 2117 provides that if a place of public accommodation has an architectural or communication barrier, the person engaged in the provision of public accommodations is required to remove the barrier, if removal is readily achievable. The bill provides that if a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation must make that person's goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those alternative methods are readily achievable. The bill also provides that in a claim for relief under North Dakota Century Code Chapter 14-02.4, neither the Labor Department nor an administrative hearing officer may order compensatory or punitive damages under the chapter. The bill provides if a claim filed by an aggrieved person proceeds to a hearing, the aggrieved person is a party in the hearing. The bill further provides that the aggrieved person may be accompanied, advised, and represented throughout the proceeding by a representative chosen by the employee, including private

counsel. The bill also provides that neither the Labor Department nor the Attorney General may represent an aggrieved person at a hearing under the chapter.

CHILD SUPPORT

House Bill No. 1037 makes technical corrections to four sections of North Dakota Century Code Chapter 14-09 by removing an obsolete reference to Section 16 of Chapter 148 of the 1989 Session Laws.

House Bill No. 1162 provides that the total amount of child support due in each month under North Dakota Century Code Section 14-09-09.30 may be increased at the request of the obligor to repay an arrearage or by agreement with the public authority.

House Bill No. 1172 provides that the public authority may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the public authority determines that the judgment interest is not collectible through commercially reasonable efforts. The bill provides that any judgment interest that is suspended or waived may be reinstated by a court at any time or by the public authority if the obligor has failed to comply with a payment plan.

Senate Bill No. 2288 deals with income withholding for child support. The bill provides that if an obligor, who would otherwise be subject to immediate income withholding in at least one case in which services are being provided by a child support agency under Title IV-D, demonstrates, and a child support agency finds there is good cause not to require immediate income withholding, the child support agency may enter into a written agreement with an obligor that provides for an alternate payment arrangement in lieu of immediate income withholding. The bill also provides that if a court determines that income withholding is inapplicable, ineffective, or insufficient to ensure monthly payment of child support, a court may order an obligor to identify or establish a deposit account that allows for periodic transfers of funds for payment of child support and to execute any necessary agreement for preauthorized transfers of funds from the account to the state disbursement unit for the payment of child support. The bill became effective March 31, 2005.

MARRIAGE AND DIVORCE

Senate Bill No. 2361 raises the fee for a marriage license from \$6 to an amount up to \$30. The bill also raises the additional fee required to be collected in addition to the marriage license fee from \$29 to \$35. This additional fee must be deposited in the domestic violence prevention fund.

PARENT AND CHILD

House Bill No. 1121 adopts the Uniform Parentage Act (2000). The bill establishes the procedure for the determination of parentage in the state. The bill also establishes a procedure for the execution of an acknowledgment of paternity, the denial of paternity, genetic testing, and paternity of a child of assisted reproduction. The bill addresses jurisdictional issues and provides for the confidentiality of certain parentage records. The bill also repeals chapters and sections of the Century Code relating to the current Uniform Parentage Act, the Uniform Status of Children of Assisted Conception Act, and paternity acknowledgment.

June 2005

TITLE 15

Education

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 15. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

BOARD OF UNIVERSITY AND SCHOOL LANDS

House Bill No. 1306 authorizes the Board of University and School Lands to sell certain property in Stark County.

Senate Bill No. 2095 removes the provision that the commissioner of University and School Lands is to be held personally liable for failing to notify a county auditor that real property held by the Board of University and School Lands, as trustee, is sold upon a contract providing for a future conveyance.

Senate Bill No. 2097 reconciles statutory language with constitutional language and ensures that leases of clay and fill material can be managed by the Board of University and School Lands in the same manner as the board manages the leasing of other surface minerals.

Senate Bill No. 2013 appropriates \$7,807,580 in special funds from the state lands maintenance fund and the oil and gas impact grant fund to the commissioner of University and School Lands and authorizes the distribution of \$4,597,200 from the permanent funds managed for the benefit of various state institutions.

STATE SCHOLARSHIPS AND GRANTS

Senate Bill No. 2064 provides that if two or more applicants for state scholarships have the same composite scores and the same numeric scores on the test of academic achievement administered by ACT, Inc., the students must be ranked according to the numeric sum of their English and mathematics scores. The bill authorizes the State Board of Higher Education to establish additional criteria to further rank applicants.

Senate Bill No. 2077 raises from \$600 to \$1,000 the grant amount that may be provided annually to an individual through the student financial assistance program.

House Bill No. 1360 provides that the fund for loans that are not coinsured by the federal government must be determined by the Bank of North Dakota.

Senate Bill No. 2078 clarifies that the student loan grants under North Dakota Century Code Section 15-10-37 are made available to graduates of board-approved colleges for the purpose of repaying outstanding student loan principal balances and changes the maximum eligibility amount from \$1,000 per 12 months of employment for a maximum of five years to \$1,000 per year with a cap of \$5,000 or such lesser amount as may be established through rule by the State Board of Higher Education. The bill also allows the State Board of Higher Education to limit the amount available to individuals who teach at grade levels or in content areas identified as having a shortage of teachers.

RESIDENT AND DEPENDENT STUDENTS - TUITION WAIVERS

House Bill No. 1271 includes in the definition of a "dependent," for the purpose of receiving a tuition waiver, a child or stepchild of a veteran who was killed in action or died from wounds or other service-connected causes, who was totally disabled as a result of service-connected causes, who died from service-connected disabilities, who was a prisoner of war, or who was declared missing in action. This definition is only applicable if the child's other parent has been a resident of this state and was a resident of this state at the time of the veteran's death or at the time of determination regarding the total disability of the veteran.

Senate Bill No. 2076 includes in the definition of a "resident student for tuition purposes" the child, widow, or widower of a veteran who was killed in action or died from wounds or other service-connected causes, who was totally disabled as a result of service-connected causes, who died from service-connected disabilities, who was a prisoner of war, or who was declared missing in action.

Senate Bill No. 2079 expands tuition waivers to include the survivors of emergency medical services personnel who died as a direct result of injuries received while engaged in the performance of official duties under circumstances dangerous to human life.

STATE BOARD OF HIGHER EDUCATION

Senate Bill No. 2032 directs the State Board of Higher Education to establish a centers of excellence program relating to economic development and directs the Centers of Excellence Commission to make funding award recommendations to the State Board of Higher Education. The commission consists of three members from the North Dakota Economic Development Foundation and three members from the State Board of Higher Education.

Senate Bill No. 2034 extends by two years the effective date of a 2001 amendment providing that funds in institution accounts are appropriated on a continuing basis to the State Board of Higher Education.

House Bill No. 1397 directs the State Board of Higher Education to contract with Kansas State University for up to five slots in the Kansas State University veterinary medical education program.

House Bill No. 1364 requires the State Board of Higher Education to create a policy relating to the assessment of faculty and teaching assistant communication skills, including the ability to speak English clearly and with good pronunciation.

NORTH DAKOTA UNIVERSITY SYSTEM

Senate Bill No. 2003 appropriates \$57,679,611 in state general funds to the North Dakota University System office and institutions, \$17,109,029 in state general funds to Bismarck State College, \$5,777,526 in state general funds to Lake Region State College, \$5,929,472 in state general funds to Williston State College, \$94,852,147 in state general funds to the University of North Dakota, \$77,496,876 in state general funds to North Dakota State University, \$25,740,160 in state general funds to the State College of Science, \$15,095,317 in state general funds to Dickinson State University, \$9,362,624 in state general funds to Mayville State College, \$27,892,719 in state general funds to Minot State University, \$12,314,942 in state general funds to Valley City State University, \$4,444,185 in state general funds to Minot State University -

Bottineau, \$31,361,002 in state general funds to the University of North Dakota School of Medicine and Health Sciences, and \$2,052,283 in state general funds to the Forest Service.

STATE BOARD FOR CAREER AND TECHNICAL EDUCATION

Senate Bill No. 2019 appropriates \$16,823,057 in state general funds to the State Board for Career and Technical Education.

Senate Bill No. 2120 creates a fund into which must be deposited all fees received by the State Board for Career and Technical Education for authorization to operate a postsecondary educational institution.

MISCELLANEOUS

Senate Bill No. 2043 removes the requirement that the director of the Educational Technology Council post a bond.

House Bill No. 1077 directs that the State Treasurer, rather than distributing Taylor Grazing Act funds directly to each school district, will calculate each county's apportioned payment, provide that payment to the appropriate county treasurer, and that the county treasurer will in turn distribute the funds to the school districts in the county.

House Bill No. 1068 makes permanent provisions allowing retired teachers to return to teaching in critical areas or disciplines without losing any retirement benefits.

House Bill No. 1172 makes records relating to the retirement benefits of a Teachers' Fund for Retirement member or a beneficiary open to a government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

TITLE 15.1

Elementary and Secondary Education

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 15.1. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

SCHOOL FINANCE

House Bill No. 1154 sets per student payments at \$2,765 for the first year of the biennium and at \$2,879 for the second year of the biennium, establishes a 38-mill deduct with an annual increase of three mills, and reconfigures weighting categories. The bill requires that in order to be eligible for supplemental payments, a school district must levy at least 180 mills and have less than 35 percent of its actual expenditures plus \$20,000 in its ending fund balance. The bill maintains teacher compensation reimbursements at \$3,000 and at \$1,000 for new teachers and establishes minimum salary levels of \$22,000 for the first year of the biennium and \$22,500 for the second year of the biennium. The bill also requires the inclusion of two days of professional development in the school calendar, provides criteria for the approval of educational associations governed by joint powers agreements, requires that school boards consist of at least five members, provides that the land from dissolved districts may be attached only to high school districts, requires the distribution of unobligated cash balances upon dissolution to the school districts receiving land from the dissolved district, requires that school districts not offering certain grade levels pay for both tuition and transportation, and includes extracurricular activity costs in the determination of tuition. The bill provides for the distribution of \$33,500,000 in transportation grants, \$759,000 in reorganization bonus payments, and \$30,000 for transportation efficiency training.

House Bill No. 1032 removes the requirement that unrestricted federal revenue be included in the determination of supplemental payments to high school districts.

Senate Bill No. 2109 clarifies that the state tuition fund consists of the net proceeds of fines for the violation of state laws and distributions from the common schools trust fund.

Senate Bill No. 2110 removes the requirement that county treasurers collect and forward to the State Treasurer all payments for school land leases within their county.

Senate Bill No. 2033 provides that with respect to students placed for noneducational purposes, a determination regarding residency must be made each September 15. The bill also precludes a school district from enrolling a student who is placed in the district for purposes other than education by an out-of-state agency or entity unless a contract exists governing responsibility for the payment of tuition and tutoring charges.

House Bill No. 1237 authorizes the Superintendent of Public Instruction to forward per student payments for special education students directly to the school district in which the students receive special education services.

SUPERINTENDENT OF PUBLIC INSTRUCTION

House Bill No. 1013 appropriates \$633,927,503 from the state general fund to the Superintendent of Public Instruction. Included in that amount is \$516,853,759 for state school

aid, \$71,600,000 for tuition apportionment payments, \$52,500,000 for special education, \$5,000,000 for supplemental per student payments, and \$50,912,120 for teacher compensation payments. The bill also raises the salary of the Superintendent of Public Instruction to \$79,757 through June 30, 2006, and to \$82,947 thereafter.

House Bill No. 1015 raises the salary of the Superintendent of Public Instruction to \$80,531 through June 30, 2006, and to \$83,753 thereafter. The bill also removes the provision that schools comply with statutory calendar requirements in order to be approved.

Senate Bill No. 2083 changes the Superintendent of Public Instruction's biennial report to an annual report.

House Bill No. 1434 requires the Superintendent of Public Instruction to present proposed changes in the state's accountability plan to the interim No Child Left Behind Committee prior to submitting the changes to the United States Secretary of Education. The bill also continues the interim No Child Left Behind Committee.

SCHOOL BOARDS

House Bill No. 1233 authorizes the board of a school district to pay dues allowing for the board to hold membership in city, county, state, and national organizations and associations.

House Bill No. 1228 authorizes the board of a school district to adopt policies governing the disbursement of school district money by the business manager. The policies may include disbursement by negotiable instructions, credit or debit cards, the payment of invoices, the use of petty cash, and electronic transfers. The policies may also cover the use of facsimile signatures.

Senate Bill No. 2226 authorizes the board of a school district to lease equipment, furniture, supplies, and textbooks for up to one year and it removes the requirement that cause be required prior to the dismissal of school district personnel.

House Bill No. 1497 provides that the business manager must notify school board candidates regarding the time and place of the drawing for position on the ballot.

House Bill No. 1433 provides that 30 days before the filing deadline for candidate names to be printed on the ballot, an official notice of the deadline must be published in the official newspaper of the city or county.

House Bill No. 1429 requires a candidate for a position on the board of a school district to file a statement of interests in accordance with North Dakota Century Code Section 16.1-09-02.

Senate Bill No. 2062 provides that the Board of Education of the city of Fargo has custody and control of all public school property within the boundaries of the Fargo Public School District.

House Bill No. 1170 exempts from bidding requirements a school board's participation in cooperative purchases with the Office of Management and Budget.

House Bill No. 1232 authorizes the board of a school district to provide a stipend to a student teacher assigned to the district.

SCHOOL DISTRICTS

Senate Bill No. 2066 provides that the first extension for a reconfiguration of instructional days is valid for one year and that all extensions thereafter are valid for five years.

House Bill No. 1160 requires reorganizing and dissolving school districts to notify Job Service North Dakota regarding obligations for payment of unemployment compensation benefits.

Senate Bill No. 2084 repeals the statutory provision that allowed school districts to be nonoperating districts for a period of three years prior to reorganization or dissolution.

House Bill No. 1417 provides that if a school board election results in a tie, a candidate involved in the tie may withdraw from consideration provided the candidate signs a statement indicating that intent.

House Bill No. 1311 provides \$119,000 in contingent payments from the 2003-05 biennium to the Velva, TGU, and Lewis and Clark School Districts because they received reduced state aid during the 2003-05 biennium as a result of reorganizations or dissolutions. The bill carries an emergency clause.

TEACHERS

House Bill No. 1076 provides that as a condition of school approval, each classroom teacher must teach only in those course areas or fields for which the teacher is licensed. The bill also provides an exception by which teachers who are not licensed to teach in a particular course area or field may become so licensed.

Senate Bill No. 2375 directs the Education Standards and Practices Board to enter discussions with surrounding states regarding the development of a unified licensure and credentialing system or the development of reciprocity regarding licensure and credentials.

House Bill No. 1358 provides that teacher and administrator contracts do not apply to individuals who are hired on or after January 1 and whose employment does not extend beyond June 30 of the same school year.

Senate Bill No. 2248 changes statutory references in a number of sections, including the teacher licensure sections, from "background checks" to "criminal history checks."

STUDENTS

Senate Bill No. 2163 allows a student who has been diagnosed with asthma or anaphylaxis to carry and administer emergency medication for the treatment of such conditions.

House Bill No. 1265 allows the parent of a child with developmental disabilities to provide home education to that child.

CURRICULUM

House Bill No. 1048 eliminates the requirement that high schools make available one-half unit of health and one-half unit of physical education during each school year and replaces it with the requirement that high schools make available only one-half unit of health and one-half unit of physical education.

House Bill No. 1374 requires each school district to provide a program of instruction for students who are English language learners.

Senate Bill No. 2260 provides an approval mechanism for early childhood programs and clarifies that per student funding is not available for such programs.

MISCELLANEOUS

House Bill No. 1194 permits North Dakota students to attend school in a contiguous South Dakota school district and if the South Dakota district permits South Dakota students to attend school in a contiguous North Dakota school district, provided the Superintendent of Public Instruction has entered into a contract with the Secretary of the South Dakota Department of Education relating to the cross-border attendance of students.

Senate Bill No. 2210 raises the compensation for members of the Education Factfinding Commission and for factfinders from \$80 per day to \$90 per day.

House Bill No. 1037 is a technical corrections bill that changed statutory cross-references regarding rulemaking by the Education Factfinding Commission.

Senate Bill No. 2262 authorizes counties to use federal mineral royalties for the planning, construction, and maintenance of public facilities and defines public facilities as any facility determined by a board of county commissioners to be primarily for public use, regardless of whether the facility is located on public or private property.

TITLE 16.1

Elections

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 16.1. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to elections may be classified in these subject areas: election administration; campaign contributions; candidates; and initiated measures.

ELECTION ADMINISTRATION

House Bill No. 1254 provides that acceptable identification for the purpose of voting means identification that shows the individual's residential address and date of birth and may include an official form identification issued by the state or a tribal government, a form of identification described by the Secretary of State, or a combination of those forms of identification. The bill requires an election board to challenge an individual's right to vote if the individual does not provide the required identification and provides that the individual may not vote unless the individual executes a voter's affidavit. The bill requires poll clerks to verify an individual's residential address and mailing address if the individual's residential address is different from the individual's residential address listed in the pollbook and requires poll clerks to record an individual's name in the pollbook if the individual's name is not contained in the pollbook but the individual is determined eligible to vote.

House Bill No. 1417 changes the method for determining a winning candidate in the event of a tie vote from a coin flip to a drawing of names. The bill allows a candidate involved in a tie vote to withdraw the candidate's name from consideration if the candidate is willing to sign a statement to that effect. The bill requires an election board to generate at least three canvass reports from the electronic voting system and provide a signed canvass report to each election judge. The bill provides that a paper ballot may not be counted if the voter did not darken the oval next to the preprinted name of a candidate or the name of a write-in candidate. The bill removes the requirement that within 30 days after receipt of the pollbooks following each presidential election, the county auditor forward one pollbook to the clerk of the United States District Court. The bill requires the clerk of the district court to deliver all ballots containing lawful write-in votes from all precincts from within the county at the meeting of the county canvassing board. The bill requires the district chairmen of the political parties from each legislative district within the county to appoint a representative of the respective parties on the county canvassing board and authorizes each political party from each legislative district within a county to request representation on the canvassing board. The bill provides that write-in votes may be canvassed under certain qualifying circumstances. The bill removes the requirement that the Governor designate another state officer to act as a member of the state canvassing board if a member of the state canvassing board is a candidate for office and provides that the officer that is a candidate must be removed from the portion of the canvass relating to that office. The bill provides that if a quorum exists on the canvassing board after removal of an officer, the remaining members must canvass the votes for that office and if a quorum does not exist, another state officer may be summoned to serve on the canvassing board to canvass the votes for that office. The bill repeals specific procedures for canvassing elections.

House Bill No. 1430 authorizes the opening of ballot boxes at an early voting precinct before the day of the election if necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box to make room for additional ballots. The bill removes the requirement that an election inspector, at the close of each day of early voting, secure any stamp and inkpad related to the election.

House Bill No. 1431 authorizes a county utilizing a polling place containing more than one precinct to use one election board to supervise all precincts even if the precincts are within different legislative districts, if each district chairman of each qualified political party is given the opportunity to have representation on the election board. The bill provides that the establishment of voting precincts and polling places must be accomplished by the appropriate governing body no later than December 31 of the year immediately preceding an election cycle and no later than 70 days before a special election.

House Bill No. 1433 provides requirements for a request of the Secretary of State for approval of a petition to recall any elected official or appointed official of a vacated elected office. The bill allows a county auditor to deliver ballots, pollbooks, ballot boxes, and other election supplies to each precinct up until the day before the election, rather than the previously required three days before the election. The bill reduces from three to one the number of election instruction cards and newspaper publications or copies of the text of measures that must be posted at each polling place. The bill reduces from four to two the number of facsimile diagrams of voting devices that must be posted at each precinct. The bill provides that if it is not possible to determine the highest total vote for Governor at the last general election for the purpose of ballot rotation for sample ballots, the precincts must be ordered according to the precincts with the greatest voting age population to the least voting age population. The bill provides that the position of names that require alternating on the ballot must be alternated by an algorithm approved by the Secretary of State designed to ensure to the extent possible that each name on the ballot for an office is listed in each position order on an equal number of precinct ballots spread across the county. The bill authorizes the inclusion of a separate column on the primary ballot for any party that had printed on the ballot at the last preceding nonpresidential election a candidate for Attorney General or Secretary of State if the candidate received at least 5 percent of the total vote cast for the office the candidate was seeking at that election. The bill requires that optical scan ballot tabulation machines print reports detailing the election results from the precinct after the close of the polls. The bill prohibits a candidate for a nonparty office from having the candidate's name printed on the general election ballot if the candidate was defeated for nomination at the primary election, unless the name is included on the ballot to fill a vacancy occurring on the ballot. The bill repeals provisions relating to the form of ballots and the counting of votes for the presidential preference contest.

House Bill No. 1452 extends from June 30, 2009, to June 30, 2011, the time for which the central voter file creation and maintenance must be paid for with funds from the state's election fund. The bill extends from 2006 to 2008 the time deadline for establishing the central voter file. The bill extends from the close of the 2008 calendar year to the close of the 2010 calendar year the implementation of the establishment of an inactive status in the central voter file. The bill repeals the requirement that the director of the Department of Corrections and Rehabilitation provide for the regular reporting to the Secretary of State of individuals who have been convicted of felonies and incarcerated. The bill removes the requirement that the state court administrator provide to the Secretary of State the name, address, date of birth, and county of residence of any individual 18 years of age or older who has been placed under a guardianship and has thus been deprived of the legal right to vote. The bill removes the requirement that the state court administrator provide information to the Secretary of State regarding individuals

18 years of age or older whose legal right to vote has been restored by a court. The bill provides that precinct pollbooks are open records, except for the unique identifier assigned to each individual, which is an exempt record.

House Bill No. 1497 provides specifications for the design of official ballots and the arrangement of names on the ballot. The bill provides that an election board or canvassing board may not count or be required to officially report a write-in vote for any name written or printed by the voter for an office that did not also include the darkening of the oval next to the write-in line. The bill allows a write-in candidate for a nonfederal office to make a timely written demand to a county canvassing board to identify and preserve any write-in vote cast for the office sought by the write-in candidate for canvass by the board. The bill requires the county canvassing board to tally and canvass any write-in vote in the same manner as lawful or qualifying write-in votes if the canvassing board is able to clearly ascertain the intent of the voter from examining the ballot because the write-in candidate's name has been written on the ballot opposite the office to be voted for or because of any cogent evidence of intent. The bill prohibits an election board or canvassing board from counting or reporting write-in votes that constitute 5 percent or less of the votes cast by the voters for the candidate receiving the most votes for that office, except in the case of a primary election where enough votes were cast as write-in votes to qualify a name for the general election ballot. The bill authorizes the opening of a ballot box during the conduct of an election, if necessary, to clear a ballot jam or to move voted ballots to a separate locked box to make room for additional ballots. The bill authorizes an elector to spoil a ballot and receive an additional ballot if the optical scanning device has indicated a possibility for a second chance voting condition. The bill repeals provisions relating to the writing or pasting of names on a ballot to indicate a voter's intent to vote for that individual.

Senate Bill No. 2336 authorizes an applicant for an absentee ballot who is a qualified elector and on active duty as a member of the United States armed forces or the United States Merchant Marine, or the spouse, child, or other dependent of an active duty member who is outside the United States, or an applicant who is a qualified elector living outside the United States, to receive an absentee ballot by mail, facsimile, or electronic mail and to return the voted ballot by facsimile transmission or electronic mail if returning the voted ballot by mail is not practicable. The bill provides requirements for applying for an absentee ballot, including the provision of the applicant's current or most recent North Dakota residential address and the provision of a facsimile telephone number or electronic mail address if the voter desires to vote by facsimile or electronic mail. The bill repeals provisions relating to the authorization of an election official to challenge the right of an individual to vote an absent voter's ballot. The bill requires that rejected absentee ballots be turned over to the county canvassing board for final determination of eligibility. The bill authorizes voters living outside the United States to use the federal write-in absentee ballot in general, special, and primary elections for local, state, or federal offices.

CAMPAIGN CONTRIBUTIONS

House Bill No. 1432 requires a committee for a judicial district candidate to file a campaign contribution statement with the Secretary of State at the times required for statewide and legislative district candidates. The bill removes the annual campaign contribution statement filing requirement for county and city candidates and establishes pre-election and year-end filing requirements for those candidates. The bill requires candidates for county office to file the statement with the county auditor and requires candidates for a city office in a city with a population of 5,000 or more to file the statement with the county auditor. The bill revises the definition of an expenditure to require that the expenditure be made for the direct purpose of

influencing the nomination for election, or election, of any person to office. The bill changes provisions relating to the filing of contribution statements to provide that contributions received from the same source must be aggregated from the beginning of the calendar year through the end of the reporting period and must include the date of the most recent reportable contribution from each contributor. The bill allows the Secretary of State or a county auditor to require an amendment to be filed for any statement, registration, or report that is incorrect or incomplete and authorizes the filing officer to charge and collect a late fee of \$50 if the report is filed within six days after the date the amendment was due, of \$100 if the report is filed between 7 and 11 days after the amendment was due, and a fee of \$200 thereafter.

CANDIDATES

House Bill No. 1103 requires a candidate to include on the candidate's nomination petition or certificate of nomination the appropriate district, legislative district, or judicial district number to which the candidate is seeking office and to state whether the petition or certificate is intended for an unexpired term of office.

House Bill No. 1429 revises language regarding the proper filing of a statement of interest by a candidate.

INITIATED MEASURES

House Bill No. 1222 requires the Legislative Council to coordinate the determination of the estimated fiscal impact of an initiated measure at least 90 days before the statewide election at which the measure will be voted upon. The bill requires the Legislative Council to hold a hearing, receive public testimony, and gather information on the estimated fiscal impact of an initiated measure upon notification from the Secretary of State that signed petitions have been submitted for placement of the measure on the ballot. The bill requires the Legislative Council to submit a statement of the estimated fiscal impact of the measure to the Secretary of State at least 30 days before the public votes on the measure and requires the Secretary of State to include a notice within the analysis of the measure specifying where copies of the statement of the estimated fiscal impact may be obtained. The bill requires an entity that provided the estimates of the fiscal impact of the measure to submit a report to the Legislative Council, within 30 days of the close of the first complete fiscal year after the effective date of an approved measure, which addresses the actual fiscal impact for the first complete fiscal year resulting from provisions of the initiated measure and a comparison to the estimates provided to the Legislative Council.

June 2005

TITLE 18
Fires
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 18. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1111 changes the time by which the Insurance Commissioner must compute the amounts due from the insurance tax distribution fund for fire protection from before September 1 to before October 1 of each year.

June 2005

TITLE 19

Food, Drugs, Oils, and Compounds

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 19. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to food, drugs, oils, and compounds may be classified into these subject areas: food and feed, chemicals, drugs, and miscellaneous.

FOOD AND FEED

House Bill No. 1241 limits liability for a food processor, manufacturer, packer, distributor, carrier, holder, seller, marketer, trade association, or advertiser of a food to a person claiming injury as a result of weight gain, obesity, or any other health condition related to weight gain.

Senate Bill No. 2004 replaces the statutory fee of \$15 for the sale of prepackaged foods from a food vending machine with the authority of the department to adopt rules to establish the amount of the fee and deposits the fee in the operating fund of the department. The bill allows the department to adopt rules establishing the amount and procedures for the collection of annual fees for the sale of beverages and deposits the fees in the operating fund of the department.

House Bill No. 1093 clarifies that registration for pet food and commercial feed expires on December 31 of every odd-numbered year, provides a minimum fee of \$10 for the inspection of commercial feeds, and creates a penalty for a commercial feed distributor that does not timely file an annual statement.

CHEMICALS

Senate Bill No. 2371 exempts from registration a minimum-risk pesticide if there is a certificate of exemption.

Senate Bill No. 2346 prohibits methyl tertiary butyl ether in quantities greater than five-tenths of 1 percent by volume in gasoline sold in this state.

House Bill No. 1009 extends the effective date for laws relating to the registration of pesticides through June 30, 2007.

DRUGS

House Bill No. 1346 requires a retailer of a methamphetamine precursor drug to have video surveillance, keep the drug behind a counter, or display only one package of any brand or type of the drug. The bill requires the retailer to keep a written record of the identification of a person purchasing the drug. The bill expires July 31, 2007.

Senate Bill No. 2401 increases the penalty by one degree for a drug offense if the defendant had a firearm in the defendant's actual possession at the time of the offense.

House Bill No. 1287 creates the crime of intentionally ingesting, inhaling, or otherwise taking into the body an illegal controlled substance. The bill makes this a Class A misdemeanor.

House Bill No. 1051 creates the crime of willfully defrauding a urine test designed to detect the presence of a chemical substance or a controlled substance. The bill makes this a Class A misdemeanor. The bill requires that a court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. The bill creates the crime of willfully manufacturing, advertising, selling, or distributing any substance or device that is intended to defraud a urine test designed to detect the presence of a chemical substance or a controlled substance. The bill makes this a Class A misdemeanor.

Senate Bill No. 2341 provides as a pilot project in Walsh, Pembina, and Grand Forks Counties, a certified drug abuse treatment program as part of probation in lieu of imprisonment. The bill provides that the program is for methamphetamine treatment and is conditioned on receiving a federal grant. The bill provides for reporting to the Attorney General, Legislative Council, and Legislative Assembly. The bill repeals a section of law allowing a first-time offender for the possession of a controlled substance to be conditionally discharged without a determination of guilt.

House Bill No. 1290 requires a court to impose as a condition of release or bail that an individual who has been arrested for a felony drug crime not use an illegal controlled substance and that the individual submit to drug testing. The bill requires the court to order testing and requires the testing to be paid for at the individual's own expense. The bill provides an exception if the crime does not relate to methamphetamine, testing is not required to ensure the appearance of the individual in court, and there is no danger to the individual or community by not testing.

Senate Bill No. 2166 allows a physician to prescribe a controlled substance for pain instead of, as previously allowed, intractable pain. The bill defines pain as acute pain and chronic pain.

MISCELLANEOUS

House Bill No. 1088 changes references to the director of the State Crime Laboratory, previously the State Toxicologist.

June 2005

TITLE 20.1

Game, Fish, Predators, and Boating

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 20.1. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

The legislation relating to game, fish, predators, and boating may be classified in the subject areas: licenses and permits; Game and Fish Department; gubernatorial proclamations; fishing and boating; fur-bearers; shooting preserves; and miscellaneous.

LICENSES AND PERMITS

House Bill No. 1238 allows corporations, limited liability companies, limited liability partnerships, limited partnerships, or partnerships to obtain gratis or preferential landowner licenses to hunt deer.

House Bill No. 1276 revises the statutes relating to and qualifications for guides and outfitters. The bill allows the game and fish director to immediately suspend, revoke, or deny a guide or outfitter license if the director determines by clear and convincing evidence that a substantial violation of a state or federal criminal hunting, fishing, or trapping law has occurred. The bill prohibits a person from acting as a hunting guide or hunting outfitter on land that person knows is owned by the state unless the appropriate state agency permits or authorizes the guiding or outfitting, on private land enrolled by the Game and Fish Department for purposes of hunting, on land on which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private land posted against hunting or trespassing without first informing and obtaining from the landowner permission to conduct guiding or outfitting on the land. The bill also prohibits a licensed outfitter from utilizing any unlicensed person to perform outfitter or guide services on behalf of the outfitter. The bill increases the penalty for providing guide or outfitting services without a license or while under suspension, revocation, or denial from a Class B misdemeanor to a Class A misdemeanor.

House Bill No. 1366 prohibits an individual who has been convicted of illegally taking a moose, elk, or bighorn sheep to apply for or receive a landowner preference moose, elk, or bighorn sheep license or participate in the bighorn sheep license auction or the North American Wildlife Enforcement Memorial Museum and Educational Center and the Rocky Mountain Elk Foundation moose and elk license raffles.

House Bill No. 1402 establishes a nonresident wild turkey hunting season and provides that the permit for nonresidents to hunt wild turkeys is \$80.

Senate Bill No. 2220 allows nonresidents who purchase nonresident waterfowl hunting licenses or nonresident small game hunting licenses to hunt cranes.

Senate Bill No. 2256 establishes a statewide nonresident waterfowl hunting license which allows a nonresident to hunt waterfowl in any zone established by gubernatorial proclamation. The bill establishes a fee for a statewide nonresident waterfowl hunting license of \$125, \$40 of which must be used for the private land open to sportsmen program.

Senate Bill No. 2294 establishes various classes and fees for nonresident licenses to sell minnows or other live bait at wholesale. The bill became effective April 20, 2005.

Senate Bill No. 2367 increases the period for which a nonresident small game hunting license is valid from 10 consecutive days or any two periods of 5 consecutive days each to 14 consecutive days or any two periods of 7 consecutive days.

Senate Bill No. 2369 increases the length of time a nonresident short-term fishing license is valid from 7 to 10 days and establishes a fee of \$25 for a nonresident short-term 10-day fishing license.

GAME AND FISH DEPARTMENT

House Bill No. 1018 appropriates \$50,560,084 to the Game and Fish Department. The bill appropriates \$3.5 million from the private land habitat and access improvement fund for the private land and access improvement program. The bill raises the ceiling on the game and fish fund below which the department may not spend money within the limits of legislative appropriation from \$10 million to \$15 million. The bill also authorizes the Governor to provide a pheasant hunting season for youth ages 12 through 16 on the Saturday and Sunday preceding the opening of the regular pheasant season.

House Bill No. 1062 revises eligibility to participate in the deerproof hay yard program by providing that a landowner who allows commercial hunting for big game on a majority of acres owned and operated in exchange for compensation and who posts a majority of the acres owned and operated by that person to prohibit big game hunting is not eligible to participate in the deerproof hay yard program.

House Bill No. 1100 provides that records that would identify the name, address, or electronic mail address of an individual participating in a wildlife harvest survey; records that would identify population distributions or locations of pallid sturgeon, bighorn sheep, moose, elk, eagles, sage grouse, prairie chickens, and any species of wildlife threatened or endangered under the federal Endangered Species Act; and telemetry radio frequency or global positioning system coordinates of monitored species, denning sites, nest locations of raptors, and the specific location of wildlife capture sites used for wildlife research or management are exempt from the open records law.

House Bill No. 1138 deletes the power of the game and fish director to enter agreements with the Bureau of Reclamation for the management of lands in the Heart Butte area acquired by the Bureau of Reclamation and provides that all interest on special accounts or funds maintained by the Game and Fish Department must be deposited in the Game and Fish Department private land habitat and access improvement fund.

House Bill No. 1189 establishes a private land access program and appropriates \$1 million from the game and fish fund to the Game and Fish Department for the purpose of entering leases with private landowners to provide access for hunting purposes.

House Bill No. 1193 allows landowners who have received a preferential landowner license to hunt elk to participate in a weighted lottery with other landowners who also have previously received a preferential landowner elk hunting license for any licenses not issued to individuals who have not previously received a preferential elk hunting license.

House Bill No. 1220 allows individuals who are blind, paraplegic, or who have lost the use of one or both arms to use battery-powered and electronic-lighted sight pins and telescopic sights not exceeding a maximum power of 4 by 32 millimeters to hunt game with a crossbow. The bill provides further that individuals who are blind and who receive a special permit to hunt game with a crossbow may hunt only on a preserve or area approved by the director.

House Bill No. 1395 increases the compensation for members of the state Game and Fish Advisory Board from \$50 per day of service to \$62.50 per day of service.

Senate Bill No. 2100 revises the definition of resident by providing that a person's residence is the place where the person remains when not called elsewhere for special or temporary purposes. The bill provides that a resident can only have one residence and a residence cannot be lost until another is gained. A residence or home is a permanent building or part of a building and may include a house, condominium, apartment, room in a house, or mobile home. A rental property, vacant lot, or house, cabin, or premises used primarily for business or recreational pursuits may not be considered a residence. The bill provides that a nonresident is a person who has not actually lived within the state or maintained that person's residence within this state for at least six months immediately preceding the date that residence is to be determined.

Senate Bill No. 2334 allows the game and fish director to issue resident licenses to any nonresident full-time student living in this state attending an institution under the jurisdiction of the State Board of Higher Education rather than only residents of those states that are members of the Midwest student exchange program or the Western undergraduate exchange program and allows the game and fish director to issue resident licenses to any nonresident full-time student living in this state who is attending a private institution of higher education.

GUBERNATORIAL PROCLAMATIONS

House Bill No. 1419 authorizes the director to issue special elk depredation management licenses pursuant to gubernatorial proclamation and establish a procedure to issue special elk depredation management licenses upon complaint on an owner of farmed elk who is experiencing elk depredation problems.

FISHING AND BOATING

House Bill No. 1137 requires retail bait vendors to comply with the game and fish director's rules before receiving a live bait retailer's license.

Senate Bill No. 2141 clarifies the boating under the influence statutes by revising the provision that provided that a person may not operate a motorboat or vessel while intoxicated or under the influence of any narcotic, drug, barbiturate, or marijuana to provide that a person may not operate a motorboat or vessel if that person has an alcohol concentration of at least ten one-hundredths of 1 percent by weight at the time of the performance of the test within two hours after the operation of a motorboat or vessel, that person is under the influence of intoxicating liquor, that person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely operating a motorboat or vessel, or that person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely operating a motorboat or vessel. The bill also specifies that the period of suspension for a person who is prohibited from operating a motorboat or vessel is between May 1 and October 1 and that the

hearing officer has 10 days after the conclusion of the hearing to deliver the decision of the hearing officer. This bill became effective May 1, 2005.

Senate Bill No. 2338 requires the Governor to implement a program for the prevention and control of aquatic nuisance species.

FUR-BEARERS

House Bill No. 1102 requires persons catching or killing a black bear or mountain lion to report the capture or killing to the Game and Fish Department within 24 hours and to turn over the entire animal to the department. The bill requires the Game and Fish Department, in cooperation with tribal authorities, to assess the status of mountain lions in North Dakota and to report its findings to the Legislative Council before July 1, 2006.

SHOOTING PRESERVES

Senate Bill No. 2290 changes the fee for a shooting preserve operating permit from \$100, if the shooting preserve consists of an area of 640 acres or less or \$100, if the shooting preserve consists of an area of more than 640 acres plus 50 cents per acre for each acre over 640 acres to \$100 plus 30 cents per acre for each acre. The bill requires all game birds propagated, possessed, or released on a shooting preserve to have one front toe or one hind toe on either foot removed back to the first joint, including the nail, before becoming six weeks of age. The bill provides that an anti-pecking device affixed to the bird before it is six weeks old and worn by the bird until it is at least 15 weeks old is acceptable in lieu of toe clipping if the anti-pecking device leaves a permanent, easily identifiable mark through the nares. The bill provides that the exterior boundaries of each shooting preserve must be clearly defined with signs around the extremity in intervals of 300 yards as opposed to 300 feet under current law. The bill also requires that if a wild upland bird of the same species hunted on the shooting preserve is taken accidentally by a client out of the regular hunting season proclaimed by the governor, or is taken by a client not in possession of a proper small game license, the client may keep the bird. However, at no time following release may a shooting preserve operator allow the number of wild and released birds harvested to exceed 100 percent of the number of birds that have been released. In addition, the bill provides that the total percent of harvested wild birds kept by clients may not exceed 25 percent of the birds harvested during the season. The bill provides that other than those wild birds allowed to be retained by a client, the shooting preserve operator must deliver to the department all wild birds harvested.

MISCELLANEOUS

House Bill No. 1088 changes the name of the State Toxicologist to the director of the State Crime Laboratory for purposes of drug and alcohol testing for hunting under the influence and boating under the influence.

House Bill No. 1239 allows individuals to hunt offroad with the written permission of the landowner or lessee who actually farms or ranches that land. However, a person may not use a motor-driven vehicle on any land other than an established road or trail to hunt upland game during the deer gun season and individuals may not drive through any cropland, brush area, slough, timber area, open prairie, or unharvested and harvested cropland, without the written permission of the landowner or lessee. The provisions relating to hunting while using a motor-driven vehicle without the written permission of the landowner or lessee do not apply to the hunting of big game during the open and lawful season for small game.

Senate Bill No. 2041 provides that an individual hunting on Indian land pursuant to a tribal hunting license is not required to possess a state license to hunt on that land. For purposes of this provision Indian land includes land within the exterior boundaries of Indian reservation held in trust by the federal government for the benefit of the Indian tribe or an Indian and land within the exterior boundaries of an Indian reservation owned in fee by an Indian tribe or an Indian. The bill also allows properly tagged game birds legally taken on Indian land to be possessed, transported, or shipped in state and big game legally taken on Indian land to be transported, shipped, or possessed off that land.

Senate Bill No. 2043 deletes the requirement that the game and fish director be bonded in the penal sum of \$10,000.

June 2005

TITLE 21
Governmental Finance
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 21. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

Senate Bill No. 2074 changes the name of the Municipal Bond Bank to the Public Finance Authority and makes appropriate changes in Title 21 and other titles.

June 2005

TITLE 22
Guaranty, Indemnity, and Suretyship
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted which primarily affected North Dakota Century Code Title 22. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

June 2005

TITLE 23

Health and Safety

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 23. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to health and safety may be classified in these subject areas: contagious diseases; medical records; pollution and waste; basic care and nursing facilities; food and lodging establishments, commercial buildings, residential dwellings, and housing authorities; State Health Officer, State Health Council, and State Department of Health; and miscellaneous.

CONTAGIOUS DISEASES

House Bill No. 1410 repeals the law relating to notification of exposure to infectious diseases and updates and modifies the laws relating to human immunodeficiency virus testing in order to make a comprehensive law relating to testing for bloodborne pathogens. The bill makes extensive changes to the bloodborne pathogen testing law, including modifying the determination of whether testing is appropriate, modifying the testing procedure requirements, and modifying the informed consent requirements for testing provisions.

Senate Bill No. 2252 expands the definition of the term "exposed individual" as it pertains to the laws relating to notification of exposure to infectious diseases, including laboratory personnel and health care providers; expands the definition of the term "exposed individual" as it pertains to human immunodeficiency virus testing, including laboratory personnel; and expands the definition of the term "significant exposure" as it pertains to the laws relating to human immunodeficiency virus testing, to include exposure to any individual, regardless of whether the individual was a patient.

MEDICAL RECORDS

Senate Bill No. 2047 provides that except for medical records that a health care provider is required to provide at no charge, a health care provider shall provide medical records at a charge that does not exceed \$20 for the first 25 pages and 75 cents per page after 25 pages.

Senate Bill No. 2189 modifies the law regarding the circumstances under which a health care provider, school, early childhood facility, city or county board of health, district health unit, and the State Health Officer may exchange immunization data with each other. The bill removes the requirement that the patient provide consent before such information may be shared and removes the requirement that the parties with whom the information is shared must have provided services to the patient.

POLLUTION AND WASTE

House Bill No. 1037, as part of the Legislative Council technical corrections bill, repeals the statute relating to review of existing municipal waste landfills.

House Bill No. 1279 addresses the hazardous waste management laws, specifically as they relate to contaminated real property. The bill allows the State Department of Health to allow for institutional controls, responsibility exemptions, and regulatory assurances to property owners and operators and to lenders.

House Bill No. 1291 modifies the State Department of Health's regulation of odors. The bill specifies the proper location at which to take an odor measurement in the case of an odor complaint, provides the proper procedure to be taken in the case of an apparent odor noncompliance, provides setback provisions for new animal feeding operations, and clarifies a county's or township's limited authority to regulate animal feeding operations and agricultural operations.

Senate Bill No. 2300 prohibits smoking in all enclosed areas of public places and places of employment. The bill provides limited exceptions for certain private residences, lodging rooms, retail tobacco stores, outdoor areas of employment, small businesses not commonly accessible to the public, bars, places rented or leased for private functions, truck stops, American Indian spiritual ceremonies, hospitals, licensed basic care facilities, and licensed nursing facilities.

BASIC CARE AND NURSING FACILITIES

House Bill No. 1190 sets the policy of determining further expansion of basic care facilities in the state. The bill states the two circumstances under which basic beds may be added between August 1, 2005, and July 31, 2007, provides the process for transferring of basic care beds, and addresses requirements for basic care beds acquired by Indian tribes.

House Bill No. 1191 sets the policy of expansion of nursing facilities in the state. The bill retains one exception to limiting expansion of nursing facility beds, allowing a facility to revert a basic care bed to a nursing bed; allows transfers of beds from one facility to another; provides a nursing bed that is converted to a basic care bed may be transferred as a basic care bed, however, that bed may not then be relicensed as a nursing bed; and addresses requirements for nursing beds acquired by Indian tribes.

FOOD AND LODGING ESTABLISHMENTS, COMMERCIAL BUILDINGS, RESIDENTIAL DWELLINGS, AND HOUSING AUTHORITIES

House Bill No. 1147 modifies the definition of the term "assisted living facility" for purposes of the lodging establishments and assisted living facilities laws. The bill provides an assisted living facility must have a series of at least five living units operated as one entity and provides that an assisted living facility does not include a facility licensed as a treatment or care center for developmentally disabled persons or licensed as a foster care home for adults.

House Bill No. 1350 provides a landlord of a residential dwelling unit shall provide an approved visual smoke detection system or other visual alarm system for fire if requested in writing by a tenant who is deaf. The bill provides this requirement does not apply if the rental property of that landlord does not exceed one building and that building does not exceed four residential dwelling units.

Senate Bill No. 2004, as part of the appropriations bill for the State Department of Health, makes several changes to the state health and safety laws. The bill expands the duties of the State Health Officer to include establishing a review process for instances in which the State Department of Health is requested to conduct an epidemiological assessment of a commercial building; expands the definitions of "food establishment" and "lodging establishment" for purposes of regulation of hotels, lodgings, restaurants, and boardinghouses; provides a pushcart and a mobile food unit must be licensed by the department; limits when the department is required to waive licensure requirements for food establishments, lodging establishments, and assisted living facilities; and repeals the statutory fee amounts and

authorizes the department to adopt rules establishing license fee amounts for food establishments, lodging establishments, pushcarts, mobile food units, assisted living facilities salvaged food distributors, bed and breakfast facilities, mobile home parks, and trailer parks.

Senate Bill No. 2227 updates and revises the housing authority law. The bill expands the definition of the term “city,” expands the definition of “housing project,” provides a definition of “persons of moderate income” and extends coverage of the housing authority law to cover certain persons of moderate income, expands the powers of a housing authority, provides construction of a housing project is a public improvement for which a housing authority is subject to competitive bidding requirements, expands how a housing authority’s bonds may be secured, and designates the tax liability of a housing authority.

Senate Bill No. 2345 increases the per diem for housing authority commissioners from \$10 per day with a maximum of \$300 per year to \$45 per day with a maximum of \$600 per year. The bill clarifies that the per diem compensation and reimbursement of expenses for housing authority commissioners does not apply to county commissioners who serve as housing authority commissioners.

STATE HEALTH OFFICER, STATE HEALTH COUNCIL, AND STATE DEPARTMENT OF HEALTH

House Bill No. 1117 provides the State Department of Health shall maintain a uniform statewide population-based registry system for the collection of data pertaining to the incidence, prevalence, risk factors, management, survival, mortality, and geographic distribution of cancer and reportable benign tumors.

House Bill No. 1243 provides the State Health Council shall adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for emergency medical services instructors and training institutions. The bill provides the rules must define minimum standards for emergency medical services training institutions. However, the bill provides licensing as an emergency medical services training institution is optional.

Senate Bill No. 2298 requires that the State Department of Health provide information and educational materials to the public regarding bone marrow donation through the national marrow donor program.

MISCELLANEOUS

House Bill No. 1121, as part of the bill adopting the Uniform Parentage Act, removes a provision of the birth registration law regarding the terms under which a father’s name may be entered on the birth certificate.

Senate Bill No. 2142 increases the license fee for a fireworks retailer from \$5 to \$20.

Senate Bill No. 2225 provides that instead of requiring that the annual meeting of the electors in a hospital district be held in the first quarter of each calendar year, the board of directors of a hospital district may determine the time of the annual meeting.

Senate Bill No. 2275 provides if a health district that was levying more than five mills merges with one or more other health districts into a single health district, the mill levy for property within the former entity that was levying more than five mills may not exceed the cap, expressed in mills, as previously authorized for that entity.

Senate Bill No. 2343 repeals the state's version of the Uniform Rights of Terminally Ill Act and incorporates that language into the law regarding durable powers of attorney for health care, resulting in a comprehensive law regarding health care directives. The health care directives law provides 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 and may also include a power of attorney to appoint an agent to make health care decisions in case of incapacity. The bill includes an optional form to use to draft a health care directive.

TITLE 24
Highways, Bridges, and Ferries
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 24. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

Senate Bill No. 2012 allows for grant or revenue anticipation financing for the Liberty Memorial Bridge improvement project and the United States Highway 2 project improvements. The bill keeps the same name for the bridge replacing the bridge between Mandan and Bismarck, known as the Liberty Memorial Bridge.

House Bill No. 1218 requires a consultant wanting to be prequalified for work with the Department of Transportation to provide information to the director in a form approved by the director. The bill entitles a prequalified consultant to receive notifications of work only in areas for which the consultant is prequalified. The bill increases the base contract amount for which direct negotiations can occur and creates a process for advertising for consultants. The bill provides that the department may procure the services of a consultant through direct negotiation if the estimated cost of the project will not be more than \$25,000. The bill provides that if the project is greater than \$25,000, but not more than \$100,000, the department must notify all prequalified firms in the specific area of need, allowing a minimum of seven calendar days to respond. The bill provides that if the project is greater than \$100,000, the department must notify all prequalified firms and allow a minimum of 21 calendar days to respond.

Senate Bill No. 2154 changes a cross-reference relating to the Department of Transportation's rulemaking authority.

Senate Bill No. 2208 changes the cross-reference relating to the Department of Transportation's rulemaking authority.

TITLE 25

Mentally Ill and Retarded, Tubercular, Blind, and Deaf

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 25. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1012 authorizes the Department of Human Services to consider the unique level of care, the additional cost required to provide services to medically fragile clients under 21 years of age, and the actual and reasonable cost of providing services to developmentally disabled individuals when reimbursing an intermediate care facility for the mentally retarded.

House Bill No. 1057 provides that following the commitment of a sexually dangerous individual, the executive director of the Department of Human Services may conduct a risk management assessment of the committed individual for the purpose of determining whether the individual may be treated safely in the community on an outpatient basis.

House Bill No. 1110 extends the moratorium on the expansion of residential treatment center for children bed capacity to July 31, 2007.

House Bill No. 1146 authorizes the Department of Human Services to allow treatment centers or care centers to transfer funds received from the department between budget categories and line items. The bill also provides that profit-motivated institutions must be allowed an annual return on investment in fixed assets related to client care. The bill removes the definitions of "fee for service" and "historical operating costs." The bill also repeals sections of North Dakota Century Code Chapter 25-18 which relate to the "fee-for-service" payment system for payment to treatment centers or care centers for individuals with developmental disabilities.

House Bill No. 1231 provides that the purpose of the School for the Deaf is to provide education and training and serve as a resource and referral center for individuals who are deaf or hearing-impaired. The bill provides that an individual's education program at the school must address the child's academic, recreation, and leisure needs, as well as the acquisition of independent living skills and career and technical education. The bill authorizes the school to collaborate with public and private entities for the provision of services to individuals who are deaf or hearing-impaired. The bill provides that the school may not compete with any public or private entity offering the same services within a region.

House Bill No. 1289 provides that except for a proceeding involving an individual who has not been convicted of a sexual act, sexual offender civil commitment proceedings and any evidence introduced or presented to the court for the proceeding are open to the public. The bill also provides that following the receipt of a referral for an incarcerated sexual offender, the state's attorney must notify the Department of Corrections and Rehabilitation and the Attorney General at least 60 days before the offender's release date regarding the state's attorney's intended disposition of the referral.

Senate Bill No. 2043 provides that because a general bonding requirement exists, the specific bonding requirement for a superintendent of any state institution under the management and control of the Department of Human Services is removed.

Senate Bill No. 2131 expands the definitions of “expert examiner” and “independent expert examiner” for purposes of mental health commitments to include a licensed psychologist trained in a clinical program.

TITLE 26.1

Insurance

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 26.1. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to insurance may be classified in seven subject areas: Insurance Commissioner; insurance companies; insurance producers and consultants; health; auto; bonds and bonding; and miscellaneous.

INSURANCE COMMISSIONER

House Bill No. 1010 increases the Insurance Commissioner's salary from \$68,018 to \$70,059 through June 30, 2006, and to \$72,861 thereafter.

House Bill No. 1015 amends House Bill No. 1010. This bill further increases the Insurance Commissioner's salary from \$70,059 to \$70,739 through June 30, 2006, and from \$72,861 to \$73,568 thereafter.

Senate Bill No. 2088 provides that it is the Insurance Commissioner, not the Attorney General, who examines the articles of incorporation and amendments to the articles of incorporation of domestic insurance companies and makes determinations of whether such articles and amendments comply with the constitution and laws of North Dakota, who reviews articles of incorporation and bylaws of mutual reinsurance companies and makes determinations of whether such articles and bylaws comply with the constitution and laws of North Dakota, and who examines the articles of incorporation of benevolent societies and makes determination of whether such articles comply with state law.

Senate Bill No. 2093 provides that for hearings on petitions for consolidation or reinsurance of domestic insurance companies and for hearings on proposed mergers or other acquisitions of control of domestic insurance companies, the Insurance Commissioner may waive the hearing if the companies involved and the policyholders of the domestic companies involved consent to waiving the hearing.

INSURANCE COMPANIES

House Bill No. 1501 addresses the territorial limits of county mutual insurance company operations modifying the authority to issue a policy on property within the platted limits of an incorporated city with a population over 10,000.

Senate Bill No. 2186 provides an insurer may not consider the following events for purposes of surcharging, declining, nonrenewing, or canceling personal insurance coverage or a binder for personal insurance coverage: an insured's inquiry into the type, the coverage, or the level of coverage of a loss; a claim if the insurer does not conduct an investigation or initiate any other claim activity; a claim if the insurer does not make payment to or on behalf of the insured; a firsthand property claim resulting from wind or hail if the insured did not have any wind or hail claim on that property within the previous five years; or a claim if the claim is over 10 years old. The bill also provides limitations on how an insured may use loss history information of a

previous owner of property and provides disclosure requirements an insurer must provide to personal insurance applicants.

Senate Bill No. 2194 addresses the law relating to reinsurance. The bill clarifies that a reinsurer's agreement to pay a claim directly to the beneficiary must be honored by the receiver of the insolvent insurance company.

INSURANCE PRODUCERS AND CONSULTANTS

House Bill No. 1112 allows a surplus lines insurance producer to accept business from any licensed insurance producer and to place that business with nonadmitted companies and allows the surplus lines insurance producer to share commissions with the licensed insurance producer.

House Bill No. 1113 decreases insurance producer biennial continuing education requirements from 30 to 24 hours; provides 3 of the required continuing education hours must be in ethics; removes the limitation on the number of continuing education hours that a producer may complete through an approved self-study course of instruction; and provides that no more than 12 hours of continuing education may be carried forward to a future reporting year.

HEALTH

House Bill No. 1114 provides that for purposes of annual reports filed by health maintenance organizations, the Insurance Commissioner may designate the National Association of Insurance Commissioners as the repository for the filing of these annual reports.

House Bill No. 1208 provides the group health insurance mandates relating to substance abuse coverage and mental health coverage deductible limitations do not apply to high-deductible health plans used to establish a health savings account under Section 223 of the Internal Revenue Code.

House Bill No. 1332 provides a person may not perform or act as a pharmacy benefits manager in North Dakota unless that person holds a certificate of registration as an administrator of life insurance, health insurance, or annuities; regulates the practice of pharmacy benefits management; and requires the Insurance Commissioner to adopt rules as necessary to regulate the practice of pharmacy benefits management.

House Bill No. 1376 creates a law regulating discount medical plan organizations and providers offering medical services to members under a discount medical plan. The bill includes regulations of the activities of discount medical plan organizations, discount medical plan organization marketers, medical services providers, and medical services provider networks. Additionally, the bill provides the discount medical plan laws may be enforced by the Insurance Commissioner or the Attorney General and violation of the identity theft laws is a violation of the consumer fraud and unlawful credit practices laws.

Senate Bill No. 2244 addresses the Comprehensive Health Association of North Dakota program. The bill modifies the definition of the term "health insurance coverage," modifies the eligibility requirements under the program as they relate to residency and the period over which an applicant received notice of uninsurability, and modifies and expands the circumstances under which the association may terminate coverage under the program.

Senate Bill No. 2282 provides that every insurance company, nonprofit health service corporation, and health maintenance organization that offers an accident and health line of insurance shall establish and implement an independent external review mechanism to review and determine whether medical care rendered under the line of insurance was medically necessary and appropriate to the claim as submitted by the provider.

Senate Bill No. 2347 expands the scope of the law that allows cooperatives to form to purchase group health insurance coverage as one entity, allowing these cooperatives to self-insure as one entity.

AUTO

Senate Bill No. 2047 modifies the auto accident reparations law. The bill amends the definitions relating to the auto accident reparations law, including the terms “accidental bodily injury,” “medical expenses,” “occupying,” and “serious injury”; modifies the rate of interest on an overdue basic and optional excess no-fault benefit to be the same rate as the interest rate on judgments; provides neither the injured person nor the basic no-fault insurer is required to pay for services billed more than 180 days following the date of treatment; provides the court may enter an order requiring an individual to submit to a mental or physical examination and provides the circumstances under which the court shall order an insured to reimburse the insurer for cancellation charges for missed examinations; provides limitations on the amount a person may charge for copies of medical records provided to a basic no-fault insurer; and repeals the law that allowed equitable allocation of losses among a basic no-fault insurer and a motor vehicle liability insurer.

Senate Bill No. 2096 provides that automobile warranty contracts, automobile mechanical breakdown contracts, and automobile service contracts issued in this state must be issued by an insurer authorized to do business in this state. The bill also provides surplus requirements and reporting requirements for such insurers.

BONDS AND BONDING

House Bill No. 1066 provides the annual premium for a bond of an agent appointed by a county auditor to distribute hunting and fishing licenses or stamps is \$10 and the amount of coverage under the bond is \$15,000 per agent per year.

House Bill No. 1178 updates the law relating to bail bonds. The bill changes from the use of the term “bail bondsman” to use of the term “bail bond agent” and provides 50 percent is the minimum amount of forfeited bond the court is required to return to a bail bond agent if the agent returns a defendant within six months of receiving notice of the defendant’s failure to appear.

Senate Bill No. 2043 updates and modifies the law relating to the state bonding fund. The bill clarifies the coverage requirements for a state legislative or judicial branch agency may be determined by the Legislative Council or Supreme Court; provides the auditor of a state agency or political subdivision shall include recommendations for changes in the amount of bond coverage in the auditor’s report; provides a required bond coverage application procedure for a state agency and political subdivision, clarifying that discretionary bonds are not required to comply with the required application; provides interest on a claim runs from the date of filing the claim with the Insurance Commissioner; provides the liability of the fund is limited to a breach of a condition of the bond which occurred within two years before the date of filing the claim with the Insurance Commissioner; and provides surety bond requirements in the case of cancellation

of the liability of the fund or at the option of a public official who wishes to be covered under a private surety bond.

Senate Bill No. 2074, as part of a bill that changes the name of the North Dakota Municipal Bond Bank to the Public Finance Authority, updates a reference in the law relating to authorized investments of funds of insurance companies.

MISCELLANEOUS

House Bill No. 1116 amends the law relating to boiler inspectors, including modifying the class of individuals the Insurance Commissioner may appoint as a boiler inspection special inspector, to allow an employee of a company qualified by the National Board of Boiler and Pressure Vessel Inspectors as an accredited owner/user inspection organization or as an accredited authorized inspection agency and by decreasing from 24 to 12 months the maximum period of validity of a certificate of inspection of a steam traction engine.

House Bill No. 1213 increases the penalty for the unauthorized act of insurance business from a Class A misdemeanor to a Class C felony.

Senate Bill No. 2094 provides that for purposes of standard fire insurance policies, a commercial insurance policy providing coverage for fire insurance may exclude coverage for loss by fire insured against if the fire is caused directly or indirectly by terrorism.

TITLE 27

Judicial Branch of Government

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 27. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to the judicial branch of government may be classified in these subject areas: state courts and juveniles.

STATE COURTS

House Bill No. 1015 increases the salaries of the Supreme Court justices and the district court judges.

House Bill No. 1064 provides that if a defendant elects to remove an action from small claims court to district court, the district court is required to award attorney's fees to a prevailing plaintiff.

Senate Bill No. 2002 increases the salaries of the Supreme Court justices and the district court judges.

Senate Bill No. 2027 establishes the Commission on Legal Counsel for Indigents. The bill provides for the powers and duties of the commission and for a transition of indigent defense services from the Supreme Court to the commission. The bill provides that the Supreme Court will maintain the current contract system for six months; however, on January 1, 2006, all indigent defense funds will be transferred to the commission.

Senate Bill No. 2043 provides that because a general bonding requirement exists, the specific bonding requirement for the clerk of district court is removed.

Senate Bill No. 2104 relates to the selection of jurors. The bill removes the population criteria that allowed a court to use when determining whether to expand the jury pool to other counties within a judicial district. The bill allows the court to expand the jury pool to other counties if the court determines that the number of prospective jurors within the county of venue is insufficient to obtain an adequate jury pool.

JUVENILES

House Bill No. 1486 provides that except for cases in which the specific necessary treatment is unavailable in the state or cases in which the appropriate treatment or services cannot be provided in a timely manner in the state, all juveniles in need of residential treatment or residential care placement must be placed in in-state residential facilities.

Senate Bill No. 2105 repeals North Dakota Century Code Section 27-02-05.2. This section provided for the position of state juvenile services coordinator.

June 2005

TITLE 28
Judicial Procedure, Civil
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 28. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to judicial civil procedure may be classified in these subject areas: administrative procedure; judgments; and miscellaneous.

ADMINISTRATIVE PROCEDURE

House Bill No. 1016 creates the Department of Emergency Services, which consists of a Division of State Radio and a Division of Homeland Security. The bill provides that the Adjutant General is the director of the department. The bill also provides for the creation of an advisory committee to the Department of Emergency Services.

House Bill No. 1088 exempts the Attorney General with respect to activities of the State Crime Laboratory from the definition of administrative agency.

House Bill No. 1169 exempts the Industrial Commission with respect to the activities of the North Dakota Transmission Authority from the definition of administrative agency.

House Bill No. 1259 exempts the North Dakota lottery from the regulatory analysis requirements of North Dakota Century Code Section 28-32-08.1.

House Bill No. 1286 removes the requirement that before obtaining discovery from an administrative agency by means of a public documents request, the requesting party first must have made a diligent and good-faith effort to review the documents under existing general law procedures for the inspection of public records and access to those documents must have been denied.

House Bill No. 1337 provides that an agency is required to mail or deliver a copy of the agency's full notice and a copy of the proposed administrative rules to each member of the Legislative Assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the Legislative Assembly. The bill provides that the agency may not charge members of the Legislative Assembly for copying costs.

House Bill No. 1421 provides for the effective dates of administrative rules. The bill changes from 30 to 20 the number of days that must elapse between the date of the publication of the notice and the date of the meeting. The bill provides that 15 business days after receipt of a notice, a copy of the notice must be mailed by the Legislative Council to any person who has paid the annual fee established by the Administrative Rules Committee.

Senate Bill No. 2027 exempts the Commission on Legal Counsel for Indigents from the definition of administrative agency.

Senate Bill No. 2074 exempts the Industrial Commission with respect to the activities of the Public Finance Authority from the definition of administrative agency.

Senate Bill No. 2159 provides that the Department of Human Services may adopt interim final rules to implement any changes necessary to simplify and align the children's health insurance program and the medical assistance program without the finding required by North Dakota Century Code 28-32-03(2). The bill became effective March 22, 2005.

JUDGMENTS

House Bill No. 1172 authorizes the Department of Human Services to issue an execution against the property of a judgment debtor if the judgment debtor is listed on the arrears registry or if the judgment creditor meets certain criteria that applies when a financial institution is doing business in two or more states. The bill also provides that the exemption from legal process does not apply to the collection of child support unless federal law requires an exemption or if complying with an execution or other process would require actuarial analysis to determine the current value of the amounts that are payable to the debtor.

House Bill No. 1188 provides that an action for recovery of damages against a person licensed by the Real Estate Commission which results from a breach of duty relating to a real estate transaction must be commenced within three years after the claim for relief has accrued.

House Bill No. 1315 provides that except for the period of redemption under North Dakota Century Code Section 32-19.1-04, which is six months, the period of redemption for all other redemptions is one year. The bill also provides that the period of redemption begins at the time of the filing of the summons and complaint in the office of the clerk of district court or at the time of the first publication of the notice before foreclosure by advertisement, unless it is determined by the court that the mortgagee is not entitled to judgment.

Senate Bill No. 2181 provides that an affidavit for renewal of a judgment must be filed with the clerk of district court where the judgment was first docketed and the clerk is required to file a copy of the affidavit for renewal in each county where the judgment was transcribed as requested by the judgment creditor.

Senate Bill No. 2232 removes a cross-reference to North Dakota Century Code Chapter 32-19.1, a chapter that is repealed by the bill.

Senate Bill No. 2302 changes the interest rate on judgments from 12 percent per annum to a rate equal to the prime rate published in the *Wall Street Journal* on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point. The bill also provides that interest on unpaid child support obligations must be calculated according to the rate currently in effect regardless of the date the obligations first became due and unpaid.

MISCELLANEOUS

Senate Bill No. 2199 provides that any action for injury or death alleging professional negligence by a physician, nurse, hospital, or nursing, basic, or assisted living facility licensed by this state or by any other health care organization, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility, must be dismissed without prejudice on motion unless the plaintiff serves upon the defendant an affidavit containing an admissible expert opinion to support a prima facie case of professional negligence within three months of the commencement of the action.

Senate Bill No. 2273 relates to the limitation on bond requirements in litigation. The bill provides that in civil litigation under any legal theory, the supersedeas bond to be furnished to

stay the execution of the judgment during the entire course of appellate review must be set in accordance with applicable laws or court rules. The bill, however, provides that the total supersedeas bond that is required of all appellants collectively may not exceed \$25 million, regardless of the amount of the judgment. The bill became effective March 22, 2005.

TITLE 29
Judicial Procedure, Criminal
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 29. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1288 amends the Uniform Post-Conviction Procedure Act. The bill provides that an individual convicted of a crime may make a motion for the performance of forensic DNA testing to demonstrate the individual's actual innocence if the testing is performed on evidence secured in relation to the trial that resulted in the conviction and the evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.

Senate Bill No. 2027 changes the entity responsible for compensating lawyers appointed to represent indigent persons from the Supreme Court to the Commission on Legal Counsel for Indigents. The bill also provides that the money in the indigent defense administration fund is appropriated on a continuing basis to the Commission on Legal Counsel for Indigents to be used in the administration of the indigent defense system.

Senate Bill No. 2148 provides that an individual who is the subject of a criminal judgment is to be committed to the legal and physical custody of the Department of Corrections and Rehabilitation rather than to the Penitentiary or the warden.

June 2005

TITLE 30
Judicial Procedure, Probate
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted which primarily affected North Dakota Century Code Title 30. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

TITLE 31
Judicial Proof
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 31. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1235 requires the court to order individuals convicted after July 31, 2005, of a felony offense to have a sample of blood or other body fluids taken for DNA law enforcement identification purposes and for inclusion in the law enforcement identification data bases.

TITLE 32

Judicial Remedies

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 32. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1084 provides that "scope of employment" means the state employee was acting on behalf of the state in the performance of duties or tasks of the employee's office or employment lawfully assigned to the employee by competent authority or law. The bill also authorizes the director of the Office of Management and Budget to settle claims under \$10,000 without consulting with the head of the state agency involved and the Attorney General.

House Bill No. 1226 removes the requirement that a person who acquires an automated external defibrillator must notify the State Department of Health of the location of and the type of automated external defibrillator.

House Bill No. 1312 establishes a procedure for obtaining a deficiency judgment on agricultural land. The bill also clarifies the requirements for a judgment on the foreclosure of a real estate mortgage.

House Bill No. 1511 relates to garnishment disclosure fees. The bill increases from \$10 to \$25 the fee for making and filing an affidavit of disclosure with the Office of Management and Budget. The bill also provides that in a garnishment proceeding, the creditor is required to serve the garnishee with a copy of the affidavit and a notice of intent to take default judgment.

Senate Bill No. 2162 provides that if a creditor renews an expiring continuing lien on wages, the creditor may serve upon the debtor a notice that a garnishee summons may be reissued for a continuing lien on wages.

Senate Bill No. 2232 removes redundant and obsolete language in the state's procedures with respect to the foreclosure of mortgages. The bill also establishes a procedure for deficiency judgments on agricultural land which is separate from other real estate mortgage deficiency judgments. The bill also repeals North Dakota Century Code Chapter 32-19.1 which relates to short-term redemption mortgages. Under the bill, short-term redemption mortgages requirements are now contained in Section 32-19-18.

Senate Bill No. 2250 authorizes state agencies to limit the liability to the state of certain contracting parties. The bill also permits the ratification of certain existing agreements that limit liability to the state. The bill became effective March 17, 2005.

Senate Bill No. 2265 relates to the liability of a political subdivision and the state with respect to the public duty of the political subdivision or the state. The bill limits the liability of a political subdivision or the state for a claim relating to injury caused by the performance or nonperformance of a public duty. The bill also provides that a public duty does not include actions of the political subdivision or state under circumstances in which a special relationship can be established between the political subdivision or state and the injured party. The bill became effective April 6, 2005.

Senate Bill No. 2378 amends provisions in the garnishment disclosure form which relate to adverse interest and setoff and dependents. The bill also provides a worksheet for determining the amount of earnings which is subject to garnishment.

June 2005

TITLE 33
County Justice Court
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted that primarily affected North Dakota Century Code Title 33. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

June 2005

TITLE 34
Labor and Employment
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 34. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1172, as part of a comprehensive child support collection bill, clarifies the civil money penalties and contempt of court actions that may be brought against an employer that has not complied with the new hire directory requirements.

House Bill No. 1347 adds the stored value card as a permissible method an employer may use to pay an employee's wages. The bill provides payment by stored value card is to be at the election of the employee when that method of payment is offered by the employer.

Senate Bill No. 2300, as part of the smoking bill, provides that the Labor Commissioner may not adopt rules relating to smoking in places of employment.

TITLE 35
Liens
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 35. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1172 modifies the law relating to child support liens, decreasing the minimum amount of arrears of an obligor required in order to establish a child support lien, allowing certain child support liens to include past-due support that accrues after the lien is perfected, and clarifying immunity of a person that acts in good faith to comply with the child support lien laws.

Senate Bill No. 2061 provides that in order for a landlord's mobile home lien to be valid against a good-faith purchaser of the mobile home, the landlord must post a notice of the lien on the primary door of the mobile home. The bill provides unauthorized removal of the notice is a Class B misdemeanor.

Senate Bill No. 2232 modifies the definition of the term mortgage for purposes of a mortgage certificate of release, providing the term means a mortgage or mortgage lien covering an interest in real property in this state given to secure a loan in the original principal amount of \$500,000 or less.

TITLE 36
Livestock
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 36. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1448 provides for the confidentiality of certain information created, collected, or maintained by the State Veterinarian or the North Dakota Stockmen's Association in connection with premises or animal identification.

House Bill No. 1392 removes the limitation that the chief brand inspector may have only two fieldmen and provides that if a brand reinspection is requested, the party in error must bear the cost of the reinspection.

House Bill No. 1180 provides that live animals used as raffle prizes may be donated to or purchased by the organization conducting the raffle.

House Bill No. 1326 provides that it is a Class B misdemeanor for any person to possess a live venomous reptile unless the person has obtained a permit from the State Veterinarian.

TITLE 37
Military
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 37. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1016 changes the name of the Division of Emergency Management to the Division of Homeland Security within the Department of Emergency Services.

Senate Bill No. 2146 provides for adjusted compensation to members of the National Guard, reserve, and active duty component who were mobilized after December 5, 1992, in support of military operations. The bill provides for \$50 for each month for domestic services with a maximum of \$900 and \$100 for each month of foreign service with a maximum of \$1,800.

House Bill No. 1355 changes the name of the commandant of the Veterans Home to the administrator of the Veterans Home. The bill provides that the Administrative Committee on Veterans Affairs may designate the administrator as commandant if the administrator is an honorably discharged veteran.

Senate Bill No. 2128 removes the one-year residency requirement preceding the applicant's application for admission to the Veterans Home. The bill removes age and length of marriage requirements for a surviving spouse to be admitted on the same footing as the veteran.

House Bill No. 1128 allows an individual to serve as county veterans' service officer in more than one county.

Senate Bill No. 2218 removes language placing county veterans' service officers under the supervision of the state commissioner of Veterans Affairs and requires the commissioner to provide recommended qualifications and standards, to assist counties with training, provide educational materials, and assist county veterans' service officers.

House Bill No. 1186 provides for the penalty of an infraction for violating a local burning ban.

Senate Bill No. 2151 provides for a system of intrastate mutual aid among emergency response units. The bill provides a procedure by which an emergency response unit may aid another emergency response unit. The bill provides for a procedure for reimbursement if emergency grant funds or other assistance becomes available.

Senate Bill No. 2129 allows the Department of Veterans Affairs to assess and collect a late payment penalty for an overdue advancement made from the veterans' aid fund.

June 2005

TITLE 38

Mining and Gas and Oil Production

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 38. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to mining and oil and gas production may be classified in these subject areas: oil and gas; geophysical exploration; and mining.

OIL AND GAS

Senate Bill No. 2014 replaces the State Geologist with the director of mineral resources. The bill provides that the Industrial Commission is authorized to appoint a director of mineral resources who serves at the pleasure of the commission and who is to carry out the duties of the director of oil and gas along with the duties of director of mineral resources. The bill also removes helium and nitrogen from the definition of subsurface minerals for purposes of subsurface mineral production and clarifies that the term subsurface minerals does not include sand and gravel and rock crushed for sand and gravel.

House Bill No. 1090 changes the term person to party for purposes of reconsideration of and appeals from Industrial Commission decisions dealing with oil and gas resources.

House Bill No. 1344 provides that the payment of royalties, bonus payments, or any other payment to a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account on behalf of a person who cannot be located does not satisfy the requirements of the termination of mineral interests statute and the mineral interest is not deemed to be used for purposes of that statute. The bill also provides that a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account that has been in existence for three years is deemed to be abandoned property and must be treated as such.

GEOPHYSICAL EXPLORATION

Senate Bill No. 2170 provides that within seven days of initial contact between the permitting agent and the operator of the land, the permitting agent must provide the operator of the land and each landowner owning land within one-half mile of the land on which geophysical exploration activities are to be conducted a written copy of the relevant geophysical exploration laws. For purposes of this provision, the operator of the land is the surface owner or surface owner's tenant of the land upon or within one-half mile of which geophysical exploration operations are to be conducted and the permitting agent is the person who secures the permit from the operator of the land to conduct geophysical exploration activities.

MINING

House Bill No. 1166 adopts the Interstate Mining Compact.

Senate Bill No. 2040 deletes the requirements that a request for bond release be published in other daily newspapers of general circulation in the locality of the surface coal mining operation in addition to the official newspaper of the county and that subsurface owners within the permit area proposed for bond release be notified.

TITLE 39

Motor Vehicles

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 39. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to motor vehicles may be classified in these subject areas: title and registration; operator's license; commercial vehicles and drivers; rules of the road and governing operators; recreational vehicles; driving while under the influence; Highway Patrol; and miscellaneous.

TITLE AND REGISTRATION

Senate Bill No. 2012 increases registration fees \$10, classifies pickup trucks as passenger motor vehicles but limits the increase due to this reclassification to one-half for this biennium, and deposits \$13 of each registration fee in the state highway fund.

House Bill No. 1044 creates an electronic lien notification procedure for motor vehicles.

Senate Bill No. 2339 increases the motorcycle safety education fee from \$5 to \$10.

Senate Bill No. 2135 requires the director to provide a uniform maximum fee schedule for branch offices, allows a person changing address for purposes of registration to do so other than in writing, removes the requirement that an application for an amateur radio station special plate be made before October 1 before the year of issuance, and removes the sunset on the issuance of commemorative Lewis and Clark number plates.

Senate Bill No. 2246 allows the owner of a park model trailer to register the trailer as a travel trailer for a registration fee of \$20 and receive a number plate.

Senate Bill No. 2368 allows for the issuance of public or nonprofit organization number plates with proof of a minimum of 400 applicants for a certain organization's number plate. The bill provides for an additional fee of \$25, of which \$10 is deposited in the highway tax distribution fund and \$15 is transferred to the proper organization.

Senate Bill No. 2348 increases the registration fee for the public transportation fund from \$2 to \$3 and increases proportionately the amount received by each county.

OPERATOR'S LICENSE

Senate Bill No. 2112 allows a person to use a nondriver photo identification card as a document making an anatomical gift.

House Bill No. 1136 requires a parent or guardian to assume liability by signing the initial application for an instruction permit or operator's license of a minor, instead of every application for an instruction permit or operator's license. The bill requires, instead of allows, the director to cancel the operator's license of a person that is not entitled to the document, that gave incorrect information on an application, or that paid with an insufficient fund or no-account check. The bill removes the requirement that a license be surrendered for a suspension and removes a

suspended license from the penalty provisions for not surrendering a license. The bill clarifies the definition of hazardous materials for the purposes of commercial driver's licenses. The bill expands the offenses for which a person may be disqualified from having a commercial driver's license for life for multiple offenses to include driving while under the influence a noncommercial motor vehicle, for leaving the scene of an accident while operating a noncommercial motor vehicle, or committing a felony while operating a noncommercial motor vehicle.

COMMERCIAL VEHICLES AND DRIVERS

Senate Bill No. 2274 provides a fee of \$100 for violating a seasonal permit. The bill provides for a bridge length permit for a fee of \$30 per trip or \$150 per calendar year. The bill provides a penalty for operating without a proper permit of \$100, instead of \$20. The bill provides that violating the conditions of any permit automatically voids the permit. The bill requires the lock or pressure valve regulator, or both, to be positioned outside the cab and inaccessible to the driver's compartment if there is more than one variable load suspension axle or retractable axle, or a combination of each, on a motor vehicle manufactured after July 31, 2005. The bill prohibits a single unit vehicle or any vehicle in combination to be equipped with more than four axles unless the additional axles are steerable, castering, or pivoting axles.

Senate Bill No. 2101 includes within the grounds for the director to refuse to register or to rescind or suspend a registration, when a motor carrier has been ordered out of service by the federal Motor Carrier Safety Administration. The bill provides that a resident building mover, instead of as previously provided, the holder of a valid building mover's permit issued by the Public Service Commission, may be exempt from registration.

House Bill No. 1357 provides for a longer combination vehicle permit for a fee of \$100 per month for fees paid on a monthly basis.

RULES OF THE ROAD AND GOVERNING OPERATORS

House Bill No. 1096 prohibits the interference with the operation of an official traffic control device.

House Bill No. 1095 allows the department to have variable speed limit signs within highway construction zones and allows a maximum speed limit reduction between any two signs in a highway construction zone of 30 miles per hour, instead of 20 miles per hour as for other portions of a highway.

House Bill No. 1098 allows the director to send a copy of an accident report to the registered owner of each vehicle involved in the accident, without request.

House Bill No. 1286 allows a law enforcement agency to provide an investigating officer's accident report to any person upon the payment of a fee of \$2.

RECREATIONAL VEHICLES

House Bill No. 1342 categorizes all-terrain vehicles as off-highway vehicles in three separate classes. The bill allows a person to operate a registered off-highway vehicle on a gravel roadway, and a paved county or township roadway if the off-highway vehicle is towing an implement of husbandry and does not exceed 25 miles per hour, or if the roadway is designated and posted at a speed not exceeding 45 miles per hour. The bill allows an operator to have a passenger on an off-highway vehicle if the vehicle is equipped to carry passengers.

Senate Bill No. 2154 defines collector snowmobiles and provides that collector snowmobiles do not need to be registered. The bill allows the director to issue a special permit to operate a collector snowmobile in a parade, organized group outings, and up to 10 days each year for personal transportation.

House Bill No. 1327 allows a person who is performing pest control or survey work for a political subdivision to operate an all-terrain vehicle on the bottom, back slope, inside slope, and shoulder of a highway other than a controlled-access highway.

House Bill No. 1412 allows an operator of an all-terrain vehicle to carry a passenger if the vehicle is equipped to carry a passenger.

Senate Bill No. 2205 removes the requirement that the registration number on a snowmobile be on the forward half of the snowmobile. The bill requires an individual 12 years of age or older to have a valid driver's license, operate on private land, or complete a snowmobile safety training course to operate a snowmobile.

DRIVING WHILE UNDER THE INFLUENCE

House Bill No. 1088 changes references to the director of the State Crime Laboratory, previously the State Toxicologist.

House Bill No. 1054 allows an offender in the drug court program who has not committed an offense for 365 days to obtain a temporary restricted license.

House Bill No. 1225 provides that the director has good cause to believe that an individual is a habitual drunkard and not entitled to a driver's license if the individual has three or more convictions or administrative suspensions for driving while under the influence within a five-year period.

Senate Bill No. 2102 requires the court to order the motor vehicle number plates of all the motor vehicles owned by an offender impounded for the duration of the suspension or revocation for a second or subsequent offense within five years for driving while under the influence. The bill provides for an exception to avoid an undue hardship.

HIGHWAY PATROL

House Bill No. 1070 changes, for retirees after July 1, 2009, the retirement benefits for Highway Patrol officers from being based on the final average salary as determined by the highest salary for any 36 consecutive months during the last 124 months of employment to the average of the highest salary received by the contributor for any 36 months during the last 180 months of employment. The bill provides for a one-time supplemental retiree benefit of 50 percent of the retiree's current monthly benefit if there are adequate funds.

House Bill No. 1069 provides retirement credit for a member reemployed after a period of qualified military service. The bill requires the Public Employees Retirement Board to provide retirement benefits for Highway Patrol service in forms that are actuarially equivalent. The bill provides that the board shall administer the plan in compliance with certain Internal Revenue Code sections in effect on August 1, 2005. The bill allows the board to disclose information to beneficiaries about other beneficiaries of the same member and to the general public of the member's name and the fact that the board is unable to locate the member. The bill allows the

member or the member's employer to pay for the conversion of sick leave into credit in the retirement system.

House Bill No. 1172 provides that the board may disclose information relating to a Highway Patrol retirement system member to a government child support enforcement agency for the purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

Senate Bill No. 2031 provides an appropriation of \$400,000 to the Highway Patrol for the purposes of training law enforcement officers and other emergency service providers.

MISCELLANEOUS

House Bill No. 1099 provides procedures for the cancellation of bond for a mobile home dealer, motor vehicle dealer, trailer dealer, or motorcycle dealer. The bill provides various penalties for violating dealer licensing laws.

House Bill No. 1016 changes cross-references to the Division of Homeland Security, previously the Division of Emergency Management.

Senate Bill No. 2099 defines convictions in tribal courts or courts of another state as convictions in this state. The bill requires that when a hearing is requested for a suspension because a licensed operator is incompetent or otherwise not qualified to be licensed, the hearing officer's recommended decision must be rendered within two days of the conclusion of the hearing, instead of as previously required, two days from the decision. The bill makes technical corrections relating to driving while under the influence. The bill repeals a Class B misdemeanor penalty for operating while under suspension or revocation in violation of this state's laws on financial responsibility or proof of financial responsibility.

House Bill No. 1229 requires the department to issue mobility-impaired parking permits to vehicles owned and operated by care providers licensed by the state, veterans-related organizations, and other entities that regularly transport mobility-impaired individuals.

Senate Bill No. 2208 increases the age that a child must be in a child restraint system from a child under four years of age to a child under seven years of age. The bill provides that a child under the age of seven who is at least 57 inches tall and weighs at least 80 pounds is not required to use a child restraint system. The bill allows a child weighing more than 40 pounds to be restrained by a lap belt if the vehicle is not equipped with lap and shoulder belts or if all lap and shoulder belts are in use by other occupants.

TITLE 40

Municipal Government

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 40. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to municipal government may be classified in these subject areas: city powers; city officers; and Municipal Bond Bank.

CITY POWERS

House Bill No. 1279 authorizes the governing body of a city to establish institutional controls that address environmental concerns with the State Department of Health. The bill defines institutional controls as restrictions on the use and management of real property that contain or prevent migration of regulated substances or other pollution or contamination, or protect receptors from exposure or the threat of exposure to regulated substances or other pollution or contamination. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on March 31, 2005.

House Bill No. 1043 provides that after December 31, 2005, any portion of a city home rule charter or city ordinance passed pursuant to a home rule charter which does conform with the provisions of the Streamlined Sales and Use Tax Agreement is invalid. The bill provides that any taxes imposed under a home rule charter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

House Bill No. 1175 provides that an exemption from property taxes on single-family residential property that is purchased or rehabilitated for an individual's primary place of residence within a renaissance zone may extend five years following the date of completion of the rehabilitation. The bill is effective for all taxable years beginning after December 31, 2004.

Senate Bill No. 2411 provides that taxes within the service area under a joint agreement between city and county governing bodies which is outside city limits may be levied within the limitations and according to the procedures provided by law for a county library fund levy, and taxes within the service area that is within city limits may be levied within the limitations and according to the procedures provided by law for a city library fund levy. The bill is effective for taxable years beginning after December 31, 2004.

House Bill No. 1525 defines a "pedestrian mall" as a street within a city designated by the governing body and improved to encourage a high concentration of pedestrian use. The bill also authorizes vehicles to be used within a pedestrian mall in designated driving and parking lanes as determined by the governing body of the city.

Senate Bill No. 2183 requires a person presenting a plat for approval to the governing body of a city to provide a copy of a title insurance policy running to the benefit of the governing body or an attorney's opinion stating the name of the owner of record.

Senate Bill No. 2324 allows a combined board of park commissioners, resulting from a combination of boards of city and county park commissioners, to levy taxes within the portion of the combined park district outside city limits within the limitations provided by law for a board of county park commissioners, and to levy taxes within the portion of the combined park district that is within city limits within the limitations provided by law for city park districts. The bill requires that the plan for combining boards of park commissioners be approved by the electorate in each affected city and county. The bill is effective for taxable years beginning after December 31, 2005.

House Bill No. 1037 corrects a reference relating to the use of proceeds from a city lodging and restaurant tax to clarify that the proceeds may be used for tourism purposes.

CITY OFFICERS

House Bill No. 1482 prohibits the head of an executive or administrative department of a city from appointing that individual's spouse, son, daughter, brother, or sister to any position under the control or direction of that individual, unless the appointment has previously been approved by the governing body of the city.

House Bill No. 1221 changes the deadline for final preparation of a city budget from no later than October 1 to no later than October 7.

House Bill No. 1429 requires a candidate for a city office to file a statement of interests with the city auditor.

House Bill No. 1433 requires a city to publish an official notice of the filing deadline for a candidate to have the candidate's name placed on the ballot for a biennial city election 30 days before the filing deadline. The bill repeals a provision relating to the counting of ballots and canvassing of votes by the governing body of a city.

House Bill No. 1417 provides that a tie vote between candidates in a city election must be determined by a drawing of names rather than a coin flip. The bill allows a candidate involved in a tie vote to withdraw from consideration if the candidate is willing to sign a statement to that effect.

MUNICIPAL BOND BANK

Senate Bill No. 2074 changes statutory references regarding the Municipal Bond Bank to refer to that entity as the Public Finance Authority.

Senate Bill No. 2276 provides that for the purposes of the Municipal Industrial Development Act, the term "municipality" includes the Municipal Bond Bank or any successor in interest to the Municipal Bond Bank for the purpose of issuing revenue bonds.

TITLE 41
Uniform Commercial Code
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 41. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1151 replaces the existing Uniform Commercial Code Article 7, relating to documents of title, with the revised Uniform Commercial Code Article 7, relating to documents of title, and corrects necessary cross-references in other articles of the Uniform Commercial Code.

House Bill No. 1427 provides that under Article 9 of the state's Uniform Commercial Code, relating to secured transactions, to the extent the rules give rights to a debtor and impose duties on a secured party, a debtor may not waive or vary the rules regarding perfection and priority of agricultural liens.

TITLE 42
Nuisances
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 42. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1291 allows that if an agricultural operation within a city has been in operation for more than a year and a business or residence that was built or established after the agricultural operation was established makes an odor complaint, the measurement for compliance must be taken within 100 feet of the subsequently established business or residence. In addition, the bill prohibits a measurement taken within 500 feet of the agricultural operation. The bill provides in areas outside a city that if there is a setback distance further than one-half mile, the measurement is taken at the setback distance unless there are buildings that preexisted the agricultural operation and an odor easement obtained. The bill provides that the department may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address an apparent violation. The bill provides for setbacks if a county does not regulate an animal feeding operation.

TITLE 43

Occupations and Professions

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 43. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

ABSTRACTERS

Senate Bill No. 2082 allows an abstractor, upon request, to omit zoning and subdivision ordinances from a surface or mineral abstract and to charge a per entry fee for each omitted zoning and subdivision ordinance, modifies the Abstracters' Board of Examiners authority to take disciplinary actions and to deny an application for certification, and describes the circumstances under which an abstractor may operate in another county.

CONTRACTORS

House Bill No. 1273, as part of a bill that replaces the existing law regarding limited partnerships, updates a cross-reference to a provision of the limited liability law.

House Bill No. 1437 addresses defects in residential buildings requiring owners to notify the contractor of the existence of a defect and requiring the contractor to respond to the owner's claim of a defect.

Senate Bill No. 2026 provides the circumstances and procedures under which a license application or renewal may be denied, modifies the causes under which a person may file a complaint against a contractor, provides the Attorney General may bring a consumer fraud action against a contractor, and provides it is a Class A misdemeanor to act as a contractor without being licensed.

PHYSICIANS

Senate Bill No. 2266 modifies the state-community matching physician loan repayment program allowing a recipient to have attended a medical school located in a United States possession or territory, decreasing from four to two years the minimum term of obligated service of a recipient, increasing from \$40,000 to \$45,000 the maximum amount of loan repayment from the state, allowing communities to negotiate a term of obligation that exceeds two years and to negotiate a community match that exceeds the state match, and modifying the period in which the recipient may apply for the grant program.

Senate Bill No. 2068 increases the membership of the State Board of Medical Examiners from 11 to 12 members by adding an additional doctor of medicine and removes the prohibition on the board president serving on an investigative panel.

DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

House Bill No. 1200 loosens the restrictions on dental practice ownership. The bill allows nondentist ownership of more than 49 percent in the case of a board-approved medical clinic, hospital, or public health setting with which a dentist is associated and in the case of a board-approved nonprofit organization created to serve the dental needs of an underserved population.

House Bill No. 1258 modifies the scope of practice of dental hygienists and dental assistants, including the adoption of rules by the State Board of Dental Examiners; provides for a two-year term of licensure for dentists and dental hygienists and a one-year term of registration for dental assistants; allows for a dentist or dental hygienist to request inactive status for a license; allows the board to audit dentists, dental hygienists, and dental assistants for continuing education compliance; prohibits a dentist from abandoning the dentist's practice; and removes the prohibition on a dentist practicing under a trade name.

REAL ESTATE SALESPERSONS APPRAISERS

House Bill No. 1240 increases from 30 to 45 hours the prelicensure education requirements for real estate salespersons and provides for an additional 15 hours of postlicensure education within one year of licensure.

House Bill No. 1475 allows the State Real Estate Commission to issue a real estate salesperson license to an organization.

REAL ESTATE APPRAISERS

House Bill No. 1124 changes the name of the real estate appraiser nonresident permit to the real estate appraiser temporary permit, clarifies the North Dakota Real Estate Appraiser Qualifications and Ethics Board may issue a permit to an applicant who is licensed or certified by another state, and removes the statutory requirement that each applicant for a real estate appraiser permit shall submit proof of compliance with the continuing education requirements.

PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

Senate Bill No. 2366 repeals and replaces the chapter of law regulating the practice of physical therapy, which includes creation of the North Dakota Board of Physical Therapy.

PRIVATE INVESTIGATORS

House Bill No. 1161 provides the circumstances under which the Private Investigative and Security Board may issue a citation or assess monetary fees for violation of licensure requirements, establishes the required elements of the citation, authorizes the board to assess an administrative fee for violation of licensure requirements, provides the terms under which a person may appeal a finding of the board, and clarifies that an injunction for unlawful practice as a private investigator does not preclude criminal prosecution of a violator.

House Bill No. 1165 redefines the definitions of private investigative service and private security service; expands and clarifies the exemptions from the investigative and security services regulation laws; and modifies the membership requirements of the Private Investigative and Security Board, providing that at least one member of the board must be actively engaged in law enforcement.

PSYCHOLOGISTS

House Bill No. 1439 provides a person may not engage in the practice of industrial-organizational psychology or represent that person to be an industrial-organizational psychologist in North Dakota unless that person is an individual who is licensed in the state as a psychologist or an industrial-organizational psychologist; requires the State Board of Psychologist Examiners to license industrial-organizational psychologists, including adopting rules relating to the requirements for licensure; and modifies the requirements relating to retention of board records and impartiality of examinations.

SOCIAL WORKERS

House Bill No. 1212 provides that if a North Dakota Board of Social Work Examiners investigation of a complaint against a social worker reveals no grounds to support the complaint, after three years the board shall expunge the complaint from the social worker's individual record in the board's office.

RESPIRATORY THERAPISTS AND POLYSOMNOGRAPHIC TECHNOLOGISTS

House Bill No. 1280 provides a person may not engage in the practice of polysomnography or represent that person to be able to practice polysomnography in North Dakota unless that person is an individual who is licensed in the state as a registered polysomnographic technologist; requires the State Board of Respiratory Care license polysomnographic technologists, including adopting rules relating to the requirements for licensure; and modifies the board membership to remove one public member and add a registered polysomnographic technologist.

Senate Bill No. 2388 provides the law regulating the practice of respiratory therapy does not prohibit an individual licensed or registered as a respiratory therapist in another state or country from providing respiratory care in an emergency in this state, providing respiratory care as a member of an organ harvesting team, or providing respiratory care on board an ambulance as part of the ambulance treatment team.

CLINICAL LABORATORY PERSONNEL

Senate Bill No. 2073 adds an exemption to the law regulating the practice of clinical laboratory personnel, providing the law does not apply to an individual supervised by an individual who is licensed by the North Dakota Board of Clinical Laboratory Practice and who performs tests and uses methods identified by rules adopted by the board and removes the exemption relating to phlebotomy personnel performing bedside screening tests.

MEMBERS OF THE MILITARY

House Bill No. 1527 provides specified occupation or profession boards shall adopt rules to provide for or shall grant on a case-by-case basis exceptions to the board's license renewal requirements in order to address renewal compliance hardships that may result from a member of the National Guard or armed forces of the United States being activated for more than 30 days or serving in the area of an armed conflict. The bill provides a board shall make a case-by-case exception determination for licensure renewals that preceded the effective date of the bill.

MARRIAGE AND FAMILY THERAPISTS

Senate Bill No. 2269 creates the North Dakota Marriage and Family Therapy Licensure Board; establishes the board's powers and duties; provides that effective January 1, 2006, unless specifically provided otherwise, only an individual licensed by the board may use the title "marriage and family therapist;" and provides violation of the licensure requirements is a Class B misdemeanor.

HOME INSPECTORS

House Bill No. 1507 provides that a person may not perform a home inspection for compensation unless registered with the Secretary of State as a home inspector, requires the Secretary of State issue registrations to home inspectors, and provides violation of the registration requirement is a Class B misdemeanor.

MISCELLANEOUS

Senate Bill No. 2248, as part of a bill that modifies the process for criminal history checks, updates the process by which the State Board of Medical Examiners and the Private Investigative and Security Board do criminal history checks on applicants or licensees.

TITLE 44

Offices and Officers

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 44. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to offices and officers may be classified in these subject areas: public officers; open records and open meetings; notaries; and bids.

PUBLIC OFFICERS

House Bill No. 1433 provides that an individual appointed to fill a vacancy in a county, district, or state office holds office until the appointee's successor is elected at the next general election that occurs at least 60 days after the vacancy.

Senate Bill No. 2195 increases state office and employee meal reimbursement for in-state travel from \$4 to \$5 for the first quarter, from \$6 to \$7.50 for the second quarter, and from \$10 to \$12.50 for the third quarter. The bill also increases the lodging reimbursement for in-state lodging for state officers and employees from \$45 plus taxes to \$50 plus taxes.

House Bill No. 1129 provides that the allowance for meals for state officers and employees for travel in noncontinental United States and overseas nonforeign areas, including Alaska, Hawaii, and Guam, is equal to the per diem meal rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States per diem committee. The bill also provides that the allowance for meals outside the United States is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States Department of State.

Senate Bill No. 2087 transfers authority over the issuance and returning of keys to the Capitol from the Office of Management and Budget to the Highway Patrol.

OPEN RECORDS AND OPEN MEETINGS

House Bill No. 1286 provides that a meeting of a public entity includes gatherings held through electronic means. The bill also provides that a public entity may charge up to 25 cents per impression of a paper copy when a request is made for public records and a reasonable fee for making a copy of the record that is not a paper copy. The bill defines a reasonable fee as the actual cost to the public entity of making the copy, including labor, materials, and equipment. The bill authorizes a public entity to impose a fee not exceeding \$25 per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour and authorizes the imposition of a fee not exceeding \$25 per hour per request, excluding the initial hour, for excising confidential or closed material. The bill provides that access to electronically stored records is free if the records are recoverable without the use of a computer backup. The bill provides that for public entities headed by a single individual, it is not an unreasonable delay or denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. The bill includes within the definition of personal information within a public employee's personnel record any date of birth of a dependent or an emergency contact. The bill provides that unless otherwise made confidential

or exempt, bids or proposals received by a public entity in response to a request for proposals are exempt from open records requirements until all of the proposals have been received and opened by the public entity or until all oral presentations regarding the proposals have been heard by the public entity. The bill provides that confidential records that are authorized by law to be disclosed to another entity continue to be confidential in the possession of the receiving entity unless otherwise provided by law. The bill authorizes a public entity to sequester all competitors in a competitive selection or hiring process from that portion of a public meeting wherein presentations are heard or interviews are conducted. The bill provides that records obtained, compiled, or prepared by a public entity in an effort to monitor and enforce compliance with the law or an order are investigatory work product that is exempt from open records requirements as long as the work product is related to monitoring or enforcement activity conducted with a reasonable good-faith belief that it will lead to enforcement of the law or order. The bill provides when a request is made for notice of public meetings, the request is effective for one year unless a different time period is specified. The bill also provides that if a public entity does not have an official newspaper, the public entity must notify the official newspaper of the county where its principal office or mailing address is located. The bill extends from 30 to 90 days the time period during which a request for an Attorney General's opinion can be made based on allegations that a meeting occurred without public notice.

Senate Bill No. 2202 exempts from open records requirements records concerning individual applicants or recipients of economic assistance or support administered under the Division of Community Services or a community action agency, including benefits or services. The bill was declared to be an emergency measure and became effective upon filing with the Secretary of State on March 22, 2005.

House Bill No. 1464 requires the State Department of Health to keep a written record of each individual who requests information and the type of information requested regarding an animal feeding operation permit. The bill also requires the department, within seven business days of receiving the request, to provide written notice to the owner and operator of the animal feeding operation describing the type of information that has been requested and the name and address of the requester. The bill requires the department to charge an individual a fee sufficient to cover the cost of mailing the notice to the owners and operators whose files are being examined and a copying fee if the individual makes inquiries on more than three files in any one request.

NOTARIES

Senate Bill No. 2353 increases the fee for the issuance of a notary commission from \$25 to \$36. The bill provides that an individual who acts as a notary or performs a notarial act without a lawful notary commission is guilty of an infraction. The bill prohibits a notary public from notarizing a signature on a document if, within five years of the date of issuance of a commission or a renewal of a commission, the notary is convicted of a criminal offense that the Secretary of State determines has a direct bearing upon the notary's ability to serve the public as a notary public.

BIDS

House Bill No. 1091 provides that if two or more bids received by the state or a political subdivision contain identical pricing or receive identical evaluation scores, preference must be given to bids submitted by North Dakota vendors.

TITLE 45
Partnerships
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 45. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1253 expands the annual reporting requirements for domestic and foreign limited liability partnerships to include reporting whether the limited liability partnership owns or leases land that is used for farming or ranching in this state. The bill also requires the reporting of this information as part of a partnership's registration as a domestic or foreign limited liability partnership.

House Bill No. 1273 repeals and replaces the law relating to limited partnerships and makes corresponding updates in statutory cross-references.

House Bill No. 1391 provides for extensive grammatical changes, technical clarifications, and substantive changes to the laws relating to partnerships, conversions and mergers, limited liability partnerships, and limited liability limited partnerships. The substantive changes address a variety of matters, including how to provide notice, electronic records and electronic signatures, establishing knowledge or notice, names, mergers, conversions, service of process, the amount of filing fees and circumstances under which certain filing fees will not be refundable, and records and determinations of the Secretary of State.

June 2005

TITLE 46
Printing Laws
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted which primarily affected North Dakota Century Code Title 46. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

TITLE 47

Property

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 47. Bills primarily affecting other titles also affect this title, and relevant provision of those bills are summarized in this memorandum.

Senate Bill No. 2239 defines wind option agreement and wind easement. The bill voids a wind option agreement, wind easement, or wind energy lease if development to produce energy from wind power has not occurred within five years.

House Bill No. 1149 modifies the list the administrator of abandoned property must prepare on an annual basis for public inspection and copying. The bill provides that the list must include the date on which the administrator received the property.

Senate Bill No. 2111 provides that any public sale of abandoned property must be preceded by a single publication of notice in a newspaper of general circulation in the county in which the property is to be sold if the sale is in a physical location, as opposed to on the Internet.

Senate Bill No. 2182 provides that a conveyance is not void or voidable because the grantee of the conveyance is a trust rather than a trustee or an estate rather than a personal representative, if the identity of the grantee is reasonably ascertainable from the conveyances or from other information of public record.

Senate Bill No. 2322 allows an individual who is not a citizen of the United States or Canada to acquire an interest in agricultural land if the individual is an alien entitled to enter the United States solely to develop and direct the operations of the enterprise of which the individual has invested or to direct the operations of an enterprise in which the individual is actively in the process of investing a substantial amount of capital, if the individual resides in this state for at least 10 months out of every year, if the individual actively participates in the operation of the agricultural land, if the agricultural land does not exceed 640 acres, and if the agricultural land holding includes a dairy operation. The bill requires the individual to notify and report to the Agriculture Commissioner.

Senate Bill No. 2161 repeals the prohibition on a recorder not to record any instruments affecting title to, possession of, or interest in agricultural land in violation of the prohibition on ownership in land by aliens.

Senate Bill No. 2174 changes the definition of excess amount as it related to an escrow account from an amount in excess of \$300 to an amount in excess of one-twelfth of the estimated total annual payments from the account.

TITLE 48
Public Buildings
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 48. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

Senate Bill No. 2023 requires an architect awarded the design contract and a construction manager awarded the construction management contract for a public improvement to carry out their contractual duties as agents to the public improvement entity. The bill prohibits the architect and the construction manager from constructing any portion of the public improvement or contracting with any contractor or subcontractor to construct any portion of the work.

Senate Bill No. 2211 extends from 10 to 15 years the term over which a governmental unit may enter a guaranteed energy savings contract. The bill limits the conditions under which a guaranteed energy savings contract provider is required to provide a bond to contracts involving facility alteration or real property improvement.

June 2005

TITLE 49

Public Utilities

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 49. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to public utilities may be classified in these subject areas: electricity; energy conversion and transmission siting; telecommunications; railroads; one-call excavation notice system; and Public Service Commission.

ELECTRICITY

Senate Bill No. 2412 authorizes electric providers to enter agreements with other electric providers having adjacent or intermingled electric supply facilities for the purpose of establishing service areas and designating the service locations to be served by each electric provider. The bill provides that electric providers may enter written agreements for the sale, transfer, exchange, or lease of equipment or facilities used to serve the areas that are the subject of a service area agreement. For purposes of electric service area agreements, electric providers include electric public utilities and rural electric cooperatives and service area means a defined geographic area containing existing or future service locations established by an agreement among the electric providers and approved by the Public Service Commission. The bill became effective April 12, 2005.

House Bill No. 1324 allows a public utility proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric service to its customers to file an application with the Public Service Commission for an advanced determination of prudence regarding the proposal. The bill provides that the commission may issue an order approving the prudence of an electric resource addition if the public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition and the commission determines that the resource addition is reasonable and prudent.

House Bill No. 1314 authorizes the Public Service Commission by rule to establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within the state and with similar entities in other states.

Senate Bill No. 2278 would have provided that a public utility planning the construction of an energy conversion facility, major capital addition to an existing energy conversion facility in which the public utility has an ownership interest, new transmission facility, new renewable energy facility, or new power purchase that was expected to have a material impact on rates could have applied to the Public Service Commission for a rate stability plan providing for the phase in of rate increases before the commercial operation of the electric resource addition. The bill was vetoed by the Governor.

ENERGY CONVERSION AND TRANSMISSION SITING

House Bill No. 1169 establishes the North Dakota Transmission Authority.

Senate Bill No. 2133 establishes a siting process expense recovery fund. The bill provides that fees received from applicants for a certificate of site compatibility, certificate of corridor compatibility, or waiver and any additional fees imposed for the completion of an energy conversion facility site, transmission facility corridor, or transmission facility route evaluation and designation process by the Public Service Commission must be deposited in the fund. All money deposited in the fund is appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The bill became effective April 20, 2005.

House Bill No. 1283 increases the threshold for an energy conversion facility which is subject to the Energy Conversion and Transmission Conversion Siting Act from a facility that generates 50,000 kilowatts or more of electricity to a facility that generates 100,000 kilowatts or more of electricity. The bill became effective March 23, 2005.

TELECOMMUNICATIONS

House Bill No. 1156 excludes telecommunications companies that are not incumbent telecommunications companies from the definition of public utility for purposes of Public Service Commission regulation. However, the bill requires telecommunications companies that are not incumbent telecommunications companies to register with the Public Service Commission.

House Bill No. 1105 authorizes the Public Service Commission to resolve numbering resource conservation administration and area code assignment issues in accordance with federal communications numbering resource orders. The bill also provides that competitive local exchange companies are subject to the requirements of North Dakota Century Code Section 49-21-02.4 which governs telecommunications companies regarding unauthorized telecommunications service or "slamming."

Senate Bill No. 2091 clarifies that the statutory price schedule or tariff filing requirement applies only to essential telecommunications services--traditional service, switched access, and related services.

Senate Bill No. 2216 revises several provisions of North Dakota Century Code Chapter 49-21 relating to regulation of telecommunications companies. The bill eliminates the transmission services line for a coin or pay telephone, measured residence service and measured business and combination business service, and nonlisted and nonpublished service from the definition of essential services. The bill clarifies that primary flat rate residence basic service is an essential telecommunications service and simplifies the definition of nonessential services. The bill clarifies what type of directory services are not subject to Title 49. The bill eliminates provisions relating to price investigations which were conducted in 1999 and studies related to the investigations which have been completed.

The bill authorizes the Public Service Commission to accept electronic filings in lieu of hard copies and deletes references to the Regulatory Reform Review Commission. The bill clarifies that revenues obtained from essential telecommunications services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential telecommunications services. The bill revises the quality of service provisions by providing that a customer and the commission on its own motion may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in

the state and clarifies that a person and the commission on its own motion may complain concerning any violation of law, rule, or order of the commission. The bill also repeals provisions governing minimum and maximum rates and notice to the public, a state prohibition on the unnecessary duplication of exchanges which is governed by federal law, a provision providing that North Dakota Century Code Chapter 49-21 may not be construed to prohibit telecommunications companies from making physical connections, a provision providing that telecommunications companies within a city may not deny physical connection to other companies or enter into a contract or abridge another company's right to extend lines or make physical connections as governed by federal law, provisions governing party lines which are no longer used in North Dakota, and a section addressing discrimination and providing for arbitration as covered elsewhere in the telecommunications code or governed by federal law.

House Bill No. 1106 provides that up to \$100,000 per biennium of money in the performance assurance fund is appropriated on a continuing basis to the Public Service Commission to monitor the operations and effect of the performance assurance plan.

RAILROADS

Senate Bill No. 2405 deletes the requirement that commercial general liability insurance for damage arising out of the use or occupancy of railroad property include an endorsement under the Federal Employers Liability Act that if the warehouse engages in the business of transporting goods from the warehouse by means of the railroad in an annual volume in excess of 250 loaded railroad cars from the provision that a railroad may require a state or federal licensed public grain warehouse or potato warehouse contracting for the use or occupancy of the railroad right of way or other adjoining property provide insurance.

ONE-CALL EXCAVATION NOTICE SYSTEM

Senate Bill No. 2209 provides that the Department of Transportation is considered an operator for the department's facilities buried on the department's rights of way for purposes of the one-call excavation notice system.

PUBLIC SERVICE COMMISSION

Senate Bill No. 2092 includes North Dakota Century Code Chapter 51-05.1, governing auctioneer's and clerk's licenses, as a chapter for which the commission may impose a penalty for violation.

House Bill No. 1008 appropriates \$945,000 to pay for the cost associated with the rail rate complaint case. The bill also increases the annual salary of Public Service Commissioners to \$71,970 through June 30, 2006, and \$74,840 thereafter.

House Bill No. 1015 amends House Bill No. 1008 to provide that the annual salary of Public Service Commissioners is \$72,669 through June 30, 2006, and \$75,576 thereafter.

TITLE 50
Public Welfare
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 50. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to public welfare may be classified in these subject areas: Department of Human Services programs; child support enforcement; child abuse and neglect; child care facilities; long-term care and related facilities; compulsive gambling treatment; and miscellaneous.

DEPARTMENT OF HUMAN SERVICES PROGRAMS

House Bill No. 1148 directs the Department of Human Services to seek a waiver of federal law to permit disabled and elderly individuals to direct their own care and to permit personal care services to be provided by nonlicensed personal care service providers.

House Bill No. 1181 increases from \$3,000 to \$5,000 the amount that may be designated for funeral expenses without affecting an applicant's or recipient's medical assistance eligibility.

House Bill No. 1206 provides that for prehospital emergency medical services, a medical assistance claim that meets the prudent layperson standard may not be denied by the Department of Human Services on the basis that the prehospital emergency medical services were not medically necessary or that a medical emergency did not exist. The bill also provides for a procedure for a medical provider to appeal a denial of payment. Under the bill, a provider may appeal a final decision of the department to the district court.

House Bill No. 1248 provides that for the purposes of eligibility for medical assistance benefits, an annuity that does not allow for assignment or transfer is void as against public policy. The bill requires the owner of the annuity to name the Department of Human Services as primary beneficiary of the annuity for payment after the death of the applicant and the applicant's spouse.

House Bill No. 1436 provides that when recovering from the estate of a medical assistance recipient, a claim may not be made nor may interest begin to accrue during the lifetime of the decedent's surviving spouse nor while there is a surviving child who is under the age of 21.

House Bill No. 1459 requires the Department of Human Services to seek federal grant funds for the planning and implementation of a prescription drug monitoring program. The bill also sets forth certain duties of the department with respect to medical assistance program management, including statewide targeted case management services and the coordination of medical assistance provider services.

House Bill No. 1460 requires the Department of Human Services to present a biennial report to the Legislative Council which provides a five-year historical analysis of the number of persons receiving services under the medical assistance program, the costs for rendering the services by program appropriations, the budget requested, the budget appropriated, and actual expenditures for each of the preceding five years. The bill also provides that using actuarial

tools, the report must project estimated usage trends and budget estimates for meeting those trends for the succeeding five-year period.

House Bill No. 1465 requires the Department of Human Services to develop a plan for the implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The bill authorizes the department to contract with an outside consultant to assist in the development of the plan. The bill also provides that the department may not pay for certain prescription drugs. The bill became effective April 26, 2005.

House Bill No. 1470 increases from 15 to 16 the number of members on the Drug Use Review Board. The bill also provides that the Department of Human Services, through the prior authorization program, may not prior authorize or otherwise restrict single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses and drugs prescribed for the treatment of acquired immune deficiency syndrome or human immunodeficiency virus or cancer.

Senate Bill No. 2028 authorizes the Department of Human Services to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services.

Senate Bill No. 2149 requires county social service boards to supervise and administer designated child welfare services under the direction and supervision of the Department of Human Services. The bill provides that through established procedures the department may release a county social service board of this duty or a county social service board may request to be released from this duty by the department. The bill provides that if a county is released from the county's duty to supervise and administer designated child welfare services, the county retains its financial responsibility for providing those services unless otherwise negotiated and approved by the department. The bill also defines "authorized agent," for the purposes of foster care licensing, child care licensing, and child abuse and neglect services, as the county social service board or another entity designated by the Department of Human Services.

Senate Bill No. 2185 removes the expiration date on the medical assistance buy-in program for certain disabled workers. The bill changes the minimum age for eligibility for the program from 18 to 16. The bill also changes the eligibility requirements for employment, income, and assets.

Senate Bill No. 2190 relates to transfers involving annuities for the purpose of medical assistance eligibility. The bill provides that for an annuity not to be considered an uncompensated assignment or transfer of assets, the annuity must be a single premium immediate annuity or an annuity in which a settlement option has been selected. The bill also provides that the annuity must return the full principal and interest within the purchaser's life expectancy as determined by the life expectancy tables published by the Centers for Medicare and Medicaid Services.

Senate Bill No. 2342 requires the Department of Human Services to determine annual payment rates for private, licensed developmental disability providers by applying the inflation rate used to develop the legislative appropriation for the department for those providers.

Senate Bill No. 2395 requires the Department of Human Services to provide up to \$50,000 per biennium for medical food and growth hormone treatment to children who have been diagnosed with Russell-Silver Syndrome, regardless of income. The bill requires the parent of a child

receiving services to obtain any health insurance available to the parent on a group basis or through an employer or union and that insurance must be the primary payer.

Senate Bill No. 2409 requires the Department of Human Services to establish and implement a procedure to facilitate funding to nongovernmental entities that provide alternatives-to-abortion services. The bill provides that the services must be outcome-based with positive outcome-based results. The bill defines “alternatives-to-abortion services” as those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

Senate Bill No. 2373 requires the Department of Human Services to implement a substance abuse treatment pilot program of up to 20 beds at the State Hospital or at a private treatment facility for the treatment and rehabilitation of individuals who are chemically dependent on methamphetamine or other controlled substances.

Senate Bill No. 2410 authorizes the Department of Human Services to determine eligibility for medical assistance and the children’s health insurance program when the department receives a joint application for these benefits. The bill became effective March 22, 2005.

CHILD SUPPORT ENFORCEMENT

House Bill No. 1162 provides that the Department of Human Services may withhold, restrict, or suspend an occupational, professional, recreational, or motor vehicle operator license at any time the licensee fails to comply with a negotiated child support payment plan. The bill provides that a copy of the order to withhold, restrict, or suspend the license must be sent to the licensee by first-class mail and that the order must state that the licensee may contest the action by making a written request for a court hearing.

House Bill No. 1172 provides that a child support arrears registry must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor’s current or most recent monthly support obligation or \$2,000, whichever is less. The bill authorizes the Department of Human Services to issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld. The bill authorizes the department to issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution. The bill provides that certain funds may not be disbursed until a time for requesting a review has expired. The bill authorizes the department to disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than \$10,000.

Senate Bill No. 2301 requires the Department of Human Services to identify any activity of the child support enforcement program the department believes may be administered more effectively, efficiently, or consistently through an agreement between two or more child support agencies or through an agreement for centralized administration. The bill increases the reimbursement from 90 to 100 percent for an affected county’s expenses for locally administered economic assistance programs in excess of the statewide average. The bill also changes the name of the child support incentives account to the child support improvement account and provides that the funds in this account, the balance of the child support incentives account, and any matching federal funds received by the state agency are appropriated on a

continuing basis for the purpose of producing increases in child support collections, federal child support incentives, or other revenue or savings to the state agency.

CHILD ABUSE AND NEGLECT

House Bill No. 1267 requires the Department of Human Services, at the time of contact with an individual subject to a child abuse or neglect assessment, to advise the individual of the specific complaints or allegations made against the individual. The bill also directs the department to train all representatives of the child protective services system regarding the legal duties of the representatives.

Senate Bill No. 2383 authorizes the Department of Human Services or a law enforcement agency to refer a child abuse or neglect case to a children's advocacy center for a forensic interview, forensic medical examination, and other services. The bill appropriates \$100,000 to the Attorney General for the purpose of funding children's advocacy centers.

CHILD CARE FACILITIES

Senate Bill No. 2248 provides that for the purposes of the child care carecheck registry, criminal history record investigations must be done in accordance with North Dakota Century Code Section 12-60-24.

Senate Bill No. 2304 expands the definition of early childhood facility to include a drop-in care center. The bill also removes the restriction that a parent, guardian, or custodian may not leave a child in the care of a drop-in care center if employment is the reason for the need for child care.

LONG-TERM CARE AND RELATED FACILITIES

House Bill No. 1110 extends the moratorium on the expansion of residential child care facility or group home bed capacity from June 30, 2005, to July 31, 2007. The bill also provides that the Department of Human Services and county social service boards are required to thoroughly explore the option of kinship care when a child is unable to return home due to safety concerns. The bill provides that absent kinship options, the department and county social service boards must provide permanency options that are in the least restrictive care and near the family's home.

House Bill No. 1147 provides that no more than two people may occupy one bedroom of each living unit of an assisted living facility. The bill also provides that an assisted living facility licensed before August 1, 2005, which meets all other licensing requirements may not be subsequently denied a license merely due to the failure to meet the requirements of North Dakota Century Code Sections 23-09-01, 50-32-01, and 50-32-02.

House Bill No. 1204 repeals North Dakota Century Code Section 50-24.4-30 which provided for a government nursing facility funding pool. The bill also authorizes the Department of Human Services to continue to access the intergovernmental transfer program if permitted by the federal government and if use of the program is found to be beneficial.

House Bill No. 1217 provides that the assets of an individual must be disregarded when determining medical assistance eligibility if the individual owns a long-term care insurance policy and that policy was purchased before application for medical assistance was made.

House Bill No. 1252 amends certain ratesetting provisions for nursing facilities and basic care facilities. The bill changes the minimum below which limits cannot be set from the 60th percentile facility rate per cost category to the median rate per cost category. The bill also removes the requirement to establish inflation factors for costs and limits using certain national indices. The bill provides that a new base period must be established at least every four years beginning with the cost report period beginning June 30, 2006.

House Bill No. 1281 authorizes a long-term care facility to request that an applicant for admission furnish the facility with the applicant's financial information regarding income and assets, including information regarding any transfers or assignments of income or assets. The bill provides that a long-term care facility may deny admission to an applicant who is unable to verify a viable payment source. The bill also provides that medical assistance eligibility may not be denied if the application of disqualifying transfer provisions would deprive the individual of nursing care and services and the individual makes a satisfactory showing that disqualifying transfers have been transferred or assigned back to the individual.

COMPULSIVE GAMBLING TREATMENT

House Bill No. 1259 relates to the North Dakota lottery. The bill changes a cross-reference in a section that relates to the transfer of certain lottery proceeds to the compulsive gambling prevention and treatment fund. The bill creates North Dakota Century Code Chapter 53-12.1 and repeals Chapter 53-12.

MISCELLANEOUS

Senate Bill No. 2118 provides for the confidentiality of individually identifiable information concerning an individual applying for or receiving assistance or services under any program administered by or under the Department of Human Services. The bill provides that any person who discloses, authorizes, or knowingly permits, participates in, or acquiesces in the disclosure of any confidential information is subject to the penalty provided in North Dakota Century Code Section 12.1-13-01. The penalty provided in Section 12.1-13-01 is a Class C felony.

Senate Bill No. 2354 affects the registration requirements for charitable organizations. The bill provides that an initial registration filed by a charitable organization in July or August following the close of an annual reporting period is valid until September 1 of the subsequent year. The bill also addresses the requirements for the registration of a foreign entity.

TITLE 51

Sales and Exchanges

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 51. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to sales and exchanges may be classified in these subject areas: consumer protection; motorized vehicles; tobacco products; and miscellaneous.

CONSUMER PROTECTION

House Bill No. 1219 provides the telephone solicitations law restrictions on the use of prerecorded or synthesized voice messages and time limitations do not apply to messages from a public safety agency notifying the person of an emergency.

House Bill No. 1284 adds "performances" to the list of activities covered under the prohibited false and misleading advertising practices, with the clarification of what types of advertising for performances are prohibited as false or misleading.

House Bill No. 1500 creates a new body of law regarding identity theft. The law provides that upon the request of a consumer, a consumer reporting agency shall include an initial or extended fraud alert on the file of that consumer; an individual who learns or reasonably suspects that the individual's personal identifying information has been unlawfully used by another may initiate a law enforcement action by contacting the local law enforcement agency; an individual who reasonably believes the individual is the victim of identity theft may petition the district court for an expedited judicial determination of the individual's factual innocence; and provides the identify theft laws may be enforced by the Attorney General and violation of the identity theft laws is a violation of the consumer fraud and unlawful credit practices laws.

Senate Bill No. 2231 provides that a person that is eligible to receive a mail-in rebate for the purchase of a product or merchandise must be given the option of providing either a street address or a post-office box number as a mailing address.

Senate Bill No. 2249 adds a Class B misdemeanor penalty provision to the restrictions on electronically printed credit card receipts; adds sellers and sellers' representatives to the class of people regulated under the home solicitations sales laws; provides the home solicitation sales laws may be enforced by a state's attorney or the Attorney General and violation of the home solicitation sales laws is a violation of the consumer fraud and unlawful credit practices laws; and decreases from 90 to 31 days the length of time an individual is required to be on the state or national do-not-call list before the state's telephone solicitation regulation laws apply.

Senate Bill No. 2251 provides that in the case of a breach of security, a person that conducts business in North Dakota and that owns or licenses computerized data that includes personal information is required to notify the residents of this state who may have been affected by the breach and provides that a person that maintains such computerized data for such an owner or licensee must notify the owner if there is a breach of security. The bill provides the breach of security laws may be enforced by the Attorney General and violation of the breach of security laws is a violation of the consumer fraud and unlawful credit practices laws.

Senate Bill No. 2335 provides a person may not charge additional monthly or annual service or maintenance fees on a gift certificate, may not limit the time for redemption on a gift certificate to a date before six years after the date of purchase of a gift certificate, or include on a gift certificate any statement suggesting that a prohibited expiration or redemption date applies. The bill provides the gift certificate laws may be enforced by the Attorney General and violation of the gift certificate laws is a violation of the consumer fraud and unlawful credit practices laws.

MOTORIZED VEHICLES

House Bill No. 1342, as part of a bill that addresses off-highway vehicles, updates a reference in the recreational vehicle franchise law.

Senate Bill No. 2191 provides for prohibitions under and for limitations on how the terms of franchise agreements for retailers of automobiles, trucks, or parts of automobiles or trucks may be changed and the terms under which the franchise dealership may be transferred. The bill provides the law relating to retail farm implement, lawn and garden equipment, and vehicle dealers does not apply to dealers of automobiles, trucks, or parts of automobiles or trucks.

Senate Bill No. 2200 addresses event recording devices on motor vehicles sold or leased in this state. The bill provides a manufacturer of a motor vehicle with an event recording device shall include specified information in the vehicle owner's manual, provides a dealer of a vehicle with an event recording device shall include specified information within the purchase contract, and provides restrictions on how data recorded on an event recorder may be used.

Senate Bill No. 2208, as part of a bill that addresses child restraint systems, updates a statutory reference in the recreational vehicle franchise law.

TOBACCO PRODUCTS

House Bill No. 1305 relates to the tobacco product master settlement agreement. The bill closes a loophole that, in effect, allowed for the release of escrow funds back to nonparticipating manufacturers once the funds were deposited.

House Bill No. 1522 regulates the sale of tobacco products through the mail or through any telecommunications means if the tobacco product is to be mailed or shipped by carrier. The bill requires that a seller take measures to determine the age of the individual purchasing the tobacco product, requires a seller to register with the Tax Commissioner and to remit to the Tax Commissioner any consumer's use taxes due, and provides penalties for violation of the tobacco products law.

MISCELLANEOUS

House Bill No. 1174, as part of a bill that provides for the licensure of money transmitters, repeals the law relating to the licensing of check sellers.

Senate Bill No. 2089 provides that upon the Public Service Commission's receipt of notice of the cancellation of an auctioneer's or a clerk's corporate surety bond, the commission shall revoke the license for which the bond was issued. The bill provides such revocation does not take place if the licensee files a new bond or evidence that the bond will be reinstated before the effective date of the bond cancellation.

Senate Bill No. 2204 provides that for purposes of the law relating to revolving charge accounts, a medical services provider is not a retail seller and goods and services do not include medical services.

TITLE 52

Social Security

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 52. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

The legislation relating to Social Security may be classified in these subject areas: unemployment insurance and miscellaneous.

UNEMPLOYMENT INSURANCE

House Bill No. 1027 revises the formula for determining unemployment compensation tax rates so that a proportionately greater responsibility is shifted to negative balance employers for that portion of the unemployment insurance tax burden which represents the amount of revenue necessary to make due progress toward the unemployment insurance reserve fund solvency target.

House Bill No. 1028 establishes an eight-member Unemployment Insurance Advisory Council, appointed by the Governor, for the purpose of advising Job Service North Dakota regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program.

House Bill No. 1082 updates and modifies employer rate determination notification and appeal procedure, personal liability of corporate officers and employees determinations and appeals, and coverage determinations and appeal procedures.

House Bill No. 1083 excludes from the definition of employment, thereby removing from coverage and taxing of wages, agricultural services performed by an alien who was admitted pursuant to what is known as the "H2A" provision of the federal Immigration and Nationality Act.

House Bill No. 1195 provides the terms under which a staffing service may be required to pay unemployment insurance taxes and the rate at which the staffing service may be required to pay, addresses employer restructuring activities and transfers of unemployment insurance tax account reserve history, and provides for implementation of the federal anti-SUTA dumping legislation.

House Bill No. 1202 provides unemployment compensation benefits are not reduced by reason of receipt of federal Social Security retirement benefits.

Senate Bill No. 2106 expands the authority of Job Service North Dakota to exchange unemployment insurance information by including the Driver's License Division of the Department of Transportation and the Department of Human Services and by clarifying that Job Service North Dakota may enter interagency agreements for the sharing of authorized information.

Senate Bill No. 2108 provides that a base period employer's account is not charged if the claimant quit or was discharged by that employer, regardless of whether the separation is during the base period; clarifies how a reimbursing employer's account would be charged in the case

of a claimant who left employment due to illness or injury and pursuant to a doctor's order; and provides that to be disqualified from receiving benefits because of student status, the claimant would have to be taking a full-time curriculum and have scheduled class hours during the same time period as the claimant worked for the base period employer from whom the claimant earned the most wages.

Senate Bill No. 2172 provides that for purposes of the unemployment compensation laws, employment does not include services performed as a participant in an Americorps program.

MISCELLANEOUS

House Bill No. 1059 updates the Work Force 2000 program by changing the name of the program to the Workforce 20/20 program, modifying program priorities, and modifying eligibility requirements for program funds.

House Bill No. 1073 increases the old-age and survivor primary insurance benefit amount.

Senate Bill No. 2085 provides the Legislative Audit and Fiscal Review Committee may request the State Auditor to cause a performance audit of Job Service North Dakota and update the requirements of such an audit.

Senate Bill No. 2086 expands the employment service authority of Job Service North Dakota to include the provision of employer-requested testing services and job fair services and the provision of individual-requested personal reemployment account services.

Senate Bill No. 2107 repeals a provision that required Job Service North Dakota to publish the state's unemployment insurance laws and rules.

TITLE 53

Sports and Amusements

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 53. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to sports and amusements may be classified in these subject areas: charitable gaming; lottery; horse racing; and miscellaneous.

CHARITABLE GAMING

House Bill No. 1087 relates to gaming equipment, supplies, games, books, and records. The bill removes the language regarding the required location of these items for purposes of inspecting, seizing, removing, examining, and auditing.

Senate Bill No. 2384 relates to raffles. The bill provides that on not more than one occasion per year, a licensed organization, at the request of a winning player, may exchange a merchandise prize valued at not more than \$25,000 for a cash prize.

LOTTERY

House Bill No. 1259 repeals the current chapter relating to the North Dakota lottery and enacts a new chapter. The bill contains provisions regarding the administration of the lottery, the powers and duties of the lottery director and the advisory commission, the selection and qualifications of lottery retailers, the purchasing of lottery tickets, and the confidentiality of lottery records. The bill also authorizes the Attorney General to adopt rules governing the operation of the lottery.

HORSE RACING

House Bill No. 1003 relates to the membership of the Racing Commission. The bill provides that a member appointed to fill a vacancy arising from other than the natural expiration of a term who serves the unexpired portion of the term may be reappointed.

House Bill No. 1389 changes the bet payoff formulas for parimutuel pools. The bill provides on the first \$11 million of total wagering handle in each biennium, 2 percent must be paid to the State Treasurer to be deposited in the general fund. The bill also provides that breakage must be paid to the Racing Commission to be deposited in the promotion fund. Regarding the wagering handle, the bill provides that on win, place, and show wagering pools in excess of \$11 million in each biennium, one-sixteenth of 1 percent must be paid to the Racing Commission to be deposited in the purse fund; one-sixteenth of 1 percent must be paid to the Racing Commission to be deposited in the promotion fund; one-sixteenth of 1 percent must be paid to the Racing Commission to be deposited in the breeders' fund; and one-sixteenth of 1 percent must be paid to the State Treasurer to be deposited in the general fund.

Senate Bill No. 2340 removes the Racing Commission from the Attorney General's office. The bill authorizes the Attorney General to request payment for any services the Attorney General renders to the Racing Commission. The bill became effective April 6, 2005.

Senate Bill No. 2344 requires the Racing Commission to deposit any fees collected under its authority in the Racing Commission operating fund. The bill provides that, subject to legislative appropriation, the commission may spend the fees for operating costs of the commission.

MISCELLANEOUS

Senate Bill No. 2356 relates to the regulation of mixed fighting style competitions by the Secretary of State. The bill provides that a person may not advertise, promote, sponsor, hold, or participate in any mixed fighting style competition until a mixed fighting style advisory board is authorized and appointed and rules governing the competitions have been adopted by the Secretary of State.

June 2005

TITLE 54

State Government

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 54. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

STATE EMBLEMS AND SYMBOLS

Senate Bill No. 2311 prohibits the use of the great seal or a copy or reproduction of the great seal on stationery or business cards, unless used on an official document of a state agency or elected or appointed official.

LEGISLATIVE ASSEMBLY

Senate Bill No. 2001 increases the monthly biennium compensation for a legislator from \$250 to \$350 a month. The increase in compensation becomes effective July 1, 2005.

Senate Bill No. 2059 increases the lodging reimbursement for members of the Legislative Assembly during a legislative session from \$650 to \$900 per month. The bill was declared to be an emergency measure and was declared to be retroactive in application to January 1, 2005. **House Bill No. 1015** also amended the provisions relating to lodging reimbursement for members of the Legislative Assembly during a legislative session. The bill provides that a member of the Legislative Assembly may elect to be reimbursed for less than the amount to which the legislator is entitled by claiming the lesser amount on a voucher. The bill authorizes the Legislative Council to establish guidelines that may result in a reduced maximum reimbursement for a single dwelling in which two or more legislators share lodging and the total rent for that dwelling exceeds the amount to which a legislator is entitled.

Senate Bill No. 2039 removes the requirement that the legislative organizational session begin at 9:00 a.m. and allows the Legislative Council to select the meeting date of the organizational session other than the first Monday in December rather than the first Tuesday after the first Monday in December.

LEGISLATIVE LOBBYING

Senate Bill No. 2303 increases the fee for registering as a lobbyist from \$20 to \$25. The bill increases from \$50 to \$60 the amount that must be expended on any single occasion on an individual by a lobbyist before the lobbyist is required to submit a detailed report of the expenditure. The bill provides that a statement of expenditures by a lobbyist must include a description of the nature of the expenditure, the amount of the expenditure, the date of the expenditure, and the name of the recipient of the expenditure. The bill requires the Secretary of State to compile and make available to the public a report of the total amount of expenditures reported by registered lobbyists and authorizes the Secretary of State to establish procedures for registration of lobbyists and filing of lobbyist expenditure reports through the Internet or other electronic means.

STATE EMPLOYEES

Senate Bill No. 2058 increases from 31 to 37.5 cents per mile the reimbursement for state officials and employees for travel by a motor vehicle.

Senate Bill No. 2298 authorizes the executive officer of a state agency to grant a leave of absence, not to exceed 20 workdays, to an employee for the purpose of donating an organ or bone marrow. The bill provides that if an employee requests donations of sick leave or annual leave, but does not receive the full amount needed for the donation of an organ or bone marrow, the executive officer of the state agency may grant a paid leave of absence for the remainder of the leave up to the maximum total of 20 workdays.

GOVERNOR AND LIEUTENANT GOVERNOR

House Bill No. 1001 increases the annual salary of the Governor from \$87,216 to \$88,926 through June 30, 2006, and \$92,483 thereafter. The bill increases the salary of the Lieutenant Governor from \$67,708 to \$69,035 through June 30, 2006, and \$71,797 thereafter.

Senate Bill No. 2349 establishes within the Governor's office an office of faith-based and community initiatives. The bill provides that the office of faith-based and community initiatives has lead responsibility to establish policies, priorities, and objectives for the state's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and community organizations. The bill requires the Governor to designate a member of the Governor's staff to serve as director of the office of faith-based and community initiatives. The bill establishes a seven-member Advisory Commission on Faith-Based and Community Initiatives.

SECRETARY OF STATE

House Bill No. 1002 requires the Secretary of State to transfer any unobligated balance in the Secretary of State's general services operating fund exceeding \$75,000 to the general fund at the close of each biennium rather than the close of each fiscal year. The bill increases the salary of the Secretary of State from \$68,018 to \$70,059 through June 30, 2006, and \$72,861 thereafter. **House Bill No. 1015** amended the provisions of House Bill No. 1002 relating to the salary of the Secretary of State to further increase the annual salary of the Secretary of State to \$72,739 through June 30, 2006, and \$73,568 thereafter.

Senate Bill No. 2043 removes the responsibility of the Secretary of State to record and maintain records of the official bond of state officials.

STATE AUDITOR

House Bill No. 1074 authorizes the State Auditor to conduct a review and assessment of computer systems and related security systems of state agencies or political subdivisions or procure the services of a specialist in information security systems or other contractors to conduct such a review.

House Bill No. 1300 provides that the State Auditor may require an annual report in lieu of a biennial audit of soil conservation districts that have less than \$200,000 of annual receipts. The bill excludes federal funds passed through a political subdivision from the \$100,000 limitation of annual receipts by a political subdivision that the State Auditor may require an annual report rather than a biennial audit. The bill provides that if any federal agency performs or requires an audit of a political subdivision that receives federal funds to pass through to another entity, the political subdivision is required to provide a copy to the State Auditor upon request by the State Auditor.

House Bill No. 1075 provides that fees charged by the State Auditor to audit a political subdivision must be deposited directly in the State Auditor operating account rather than being paid to the State Treasurer for deposit in that account.

Senate Bill No. 2069 exempts from the State Auditor's access of records active investigatory work product of the Attorney General. The bill provides that except for active investigatory work product of the Attorney General and tax records, access by the State Auditor includes inspection of any books, papers, accounts, or records that the State Auditor may deem relevant to an ongoing audit of any other state agency or computer system audit.

Senate Bill No. 2072 repeals the requirement that the State Auditor prepare and furnish to county officers a manual of accounting and auditing procedures and uniform audit accounting forms.

Senate Bill No. 2071 requires the State Auditor to present results of information technology compliance reviews to the State Information Technology Advisory Committee.

House Bill No. 1004 increases the salary of the State Auditor from \$68,018 to \$70,059 through June 30, 2006, and \$72,861 thereafter. **House Bill No. 1015** amended the provisions of House Bill No. 1004 relating to the salary of the State Auditor to further increase the State Auditor's annual salary to \$70,739 through June 30, 2006, and \$73,568 thereafter.

House Bill No. 1259 changes a statutory reference to audits required of the North Dakota lottery to refer to the new North Dakota Century Code chapter relating to the state lottery.

STATE TREASURER

House Bill No. 1046 requires the State Treasurer to correct any underpayment, overpayment, or erroneous payment of tax distribution funds made by the State Treasurer. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on March 16, 2005.

House Bill No. 1005 increases the salary of the State Treasurer from \$64,233 to \$66,160 through June 30, 2006, and \$68,806 thereafter. **House Bill No. 1015** amended the provisions of House Bill No. 1005 relating to the salary of the State Treasurer to further increase the salary of the State Treasurer to \$66,802 through June 30, 2006, and \$69,474 thereafter.

ATTORNEY GENERAL

House Bill No. 1034 authorizes the Attorney General to provide legal counsel and legal opinions to local boards of health.

House Bill No. 1003 allows a member of the Racing Commission who is appointed to fill a vacancy on the commission to be reappointed to the commission. The bill increases the salary of the Attorney General from \$74,668 to \$76,908 through June 30, 2006, and \$79,984 thereafter. **House Bill No. 1015** amended the provisions of House Bill No. 1003 relating to the salary of the Attorney General to further increase the annual salary of the Attorney General to \$77,655 through June 30, 2006, and \$80,761 thereafter.

EMERGENCY COMMISSION

House Bill No. 1278 provides that any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent before the next regular legislative session, upon the approval for acceptance by the Emergency Commission and the Budget Section, must be deposited into a special fund until the Legislative Assembly appropriates the funds.

Senate Bill No. 2098 removes the requirement that a petition presented to the Emergency Commission requesting to transfer money and spending authority be verified.

INDUSTRIAL COMMISSION

House Bill No. 1152 requires the Industrial Commission to transfer to the state general fund \$9 million of earnings from the North Dakota Student Loan Trust during the biennium beginning July 1, 2005, and ending June 30, 2007.

House Bill No. 1526 requires the Industrial Commission to establish at the Bank of North Dakota a guarantee program for a business located in the state which contracts with a business located in the state which is either owned by one of the five North Dakota Indian tribes or which is an American Indian-owned small business located in the state. The Industrial Commission is required to limit participation in the guarantee program so that the cumulative value of the guaranteed portion of the receivables under the program does not exceed \$5 million at any one time. The bill is effective through June 30, 2007.

Senate Bill No. 2150 provides that in addition to lease agreements, the North Dakota Building Authority may finance projects through mortgages, direct or installment sale contracts, loan agreements, or take-or-pay or other similar agreements.

Senate Bill No. 2014 provides that the salary for the secretary of the Industrial Commission may exceed the maximum salary in the grade established for the classification assigned to the position. The bill transfers functions of the State Geologist to the director of Mineral Resources and authorizes the director of Mineral Resources to either appoint the State Geologist or carry out the duties of the State Geologist along with the duties of the director of Mineral Resources.

Senate Bill No. 2130 authorizes the Industrial Commission to set the compensation for members of a board, committee, or council that advises the commission.

Senate Bill No. 2074 changes various statutory references to the "Municipal Bond Bank" to the "Public Finance Authority" to reflect the change in the name of that entity.

STATE BUILDING CODE

Senate Bill No. 2325 authorizes the Department of Commerce to adopt rules to establish fees for certification and training of manufactured home installers and assess costs for processing complaints. The bill provides that manufactured homes may be installed in accordance with either standards adopted in the rules of the Department of Commerce or the manufacturer's instructions. The bill establishes a penalty of a Class A misdemeanor for the violation of laws or rules relating to the installation of manufactured homes.

DIVISION OF STATE RADIO

House Bill No. 1016 changes statutory references to the "State Radio Department" to the "Division of State Radio of the Department of Emergency Services."

HIGHWAY TAX DISTRIBUTION FUND

Senate Bill No. 2080 clarifies the highway tax distribution fund formula to state that the share distributed to cities is 27 percent of the amount allocated to the counties' share.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

House Bill No. 1408 appropriates \$150,000 to the Department of Corrections and Rehabilitation for the biennium beginning July 1, 2005, and ending June 30, 2007, as a pilot project, for the purpose of reimbursing a nonprofit faith-based organization in the state for room and board costs associated with an extended residential care program in northwestern North Dakota for indigent adults with alcohol or other substance abuse issues.

Senate Bill No. 2148 defines the terms "inmate," "juvenile offender," "offender," "parolee," and "probationer."

NORTH DAKOTA LIBRARIES

House Bill No. 1080 provides that all appointed members of the North Dakota Library Coordinating Council, except the two citizens at large, must be practicing librarians. The bill requires the Library Coordinating Council to support and strengthen library cooperative ventures, promote equitable access to information resources and library services throughout the state, and promote the services of libraries and librarians.

House Bill No. 1079 provides that each public library receiving state aid must submit to the State Library an annual report detailing the expenditures of the funds and all other funds expended by the library within the calendar year rather than the fiscal year.

LEGISLATIVE COUNCIL

House Bill No. 1523 requires the establishment of an interim Workers' Compensation Review Committee. The bill requires that the committee consist of two members of the Senate appointed by the majority leader of the Senate, one member of the Senate appointed by the minority leader, two members of the House of Representatives appointed by the majority leader of the House, and one member of the House of Representatives appointed by the minority leader. The bill requires the committee to review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation. The bill is effective through July 31, 2007.

House Bill No. 1434 requires the Legislative Council to appoint an interim committee consisting of 11 members to study the No Child Left Behind Act of 2001. The bill requires the committee to direct its efforts to ensuring that no child in the state is left behind and to further ensure that no law or rule hinders or otherwise impedes the ability of teachers, schools, and school districts to achieve that goal.

House Bill No. 1524 establishes a committee on tribal and state relations consisting of the chairman of the Legislative Council or the chairman's designee and three members of the Senate and three members of the House of Representatives. The bill requires the committee to conduct joint meetings with the Native American Tribal Citizens' Task Force to study tribal-state issues. The bill provides that the Native American Tribal Citizens' Task Force is composed of the executive director of the Indian Affairs Commission or the executive director's designee and the chairman or chairman's designee of each of the five Indian tribes in the state. The bill is effective through July 31, 2007.

AGREEMENTS BETWEEN PUBLIC AGENCIES AND INDIAN TRIBES

House Bill No. 1081 requires a school district that is contemplating entering an agreement with an Indian tribe to provide written notice to the Superintendent of Public Instruction that it is contemplating entering an agreement and consider written recommendations that the Superintendent makes regarding the agreement.

OFFICE OF MANAGEMENT AND BUDGET

Senate Bill No. 2035 continues the requirement that the budget request for the North Dakota University System include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the North Dakota University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding through June 30, 2007. The bill was declared to be an

emergency measure and became effective upon its filing with the Secretary of State on March 8, 2005.

Senate Bill No. 2036 continues the North Dakota University System's authority to carry over at the end of the biennium unspent general fund appropriations through June 30, 2007. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on March 17, 2005.

Senate Bill No. 2121 authorizes the chairmen of the Appropriations Committees of the Senate and House of Representatives and the Office of Management and Budget to continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which the appropriations became available upon recommendation of the director of the budget for purchases by the Department of Transportation of roadway maintenance equipment costing more than \$10,000 per unit if the equipment was ordered during the first 21 months of the biennium in which the funds were appropriated. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on March 25, 2005.

House Bill No. 1177 provides that unexpended appropriations for the State Historical Society are not subject to cancellation and requires the State Historical Society to report on the amounts and uses of funds carried over from one biennium to the Appropriations Committees of the next subsequent Legislative Assembly.

House Bill No. 1301 would have required the director of the budget to include in budget reports to the Legislative Assembly a detailed report on outstanding bonds and on all authorizations for issuing bonds by state agencies and institutions included in the executive budget, including the proposed purposes, amounts to finance, anticipated proceeds and anticipated repayment terms, the responsibility of the state to repay the bonds, and sources of funds for repayments. After the adjournment of the legislative session, the Governor vetoed the bill.

House Bill No. 1015 would have required the director of the budget to include in budget reports drafts of proposed appropriations acts for executive branch departments, agencies, and institutions, including institutions of higher education, providing the same funding as approved by the most recently adjourned special or regular legislative session of the Legislative Assembly and amendments to the drafts of appropriations acts embodying the budget data and recommendations of the Governor for appropriations for the next biennium. The bill also would have required that the budget data include a financial plan for a prospective period of six years, including the executive budget recommendations for the next biennium, estimates of anticipated general fund and non-general fund revenues prepared for an additional period of four years, and estimates of the general fund and non-general fund appropriations required for each major program for an additional period of four years. The bill would have required that any capital project funded with general fund money or special funds be included in draft amendments to the appropriate agency's appropriations bill. The Governor line item vetoed the provisions of House Bill No. 1015 which related to the preparation of budget data and the contents of the capital construction bill after the adjournment of the legislative session.

House Bill No. 1023 exempts from the requirement to cancel all unexpended appropriations any appropriation authorized for ongoing information technology projects. The bill provides that revisions to the state compensation plan for county employees covered by the plan may become effective on July 1 following the close of a regular legislative session if determined by the board of county commissioners rather than on January 1 of the first full calendar year following the revision.

House Bill No. 1053 requires the director of the budget, subject to the availability of funds in the general fund at the end of the biennium, to return to the Bank of North Dakota any funds transferred from the Bank to the general fund in response to a projected shortfall of general fund revenues pursuant to a contingent authorization by the Legislative Assembly.

Senate Bill No. 2087 transfers authority for Capitol security from the director of the Office of Management and Budget to the Highway Patrol.

House Bill No. 1085 removes the requirement that a county treasurer submit a duplicate copy of a report of state taxes collected in the previous month to the Office of Management and Budget.

Senate Bill No. 2075 removes the requirement that the director of Human Resource Management Services submit a biennial report and requires the State Personnel Board to ensure that the director includes the activities of the board in the Office of Management and Budget biennial report.

House Bill No. 1170 requires the Office of Management and Budget to purchase commodities or services as requested by agencies and institutions under the jurisdiction of the State Board of Higher Education and the legislative and judicial branches of state government. The bill requires the Office of Management and Budget and the agencies and institutions under the jurisdiction of the State Board of Higher Education to make joint purchases of like commodities or services of high common usage when the Office of Management and Budget and the State Board of Higher Education determine it is in the best interest of the state. The bill authorizes the director of the Office of Management and Budget to agree to purchase commodities or services under contracts entered by the United States General Services Administration or contracts of other government entities if it is in the best interest of the state. The bill authorizes the director of the Office of Management and Budget to participate in, sponsor, or administer a cooperative purchasing agreement with one or more government entities or a nonprofit organization established on behalf of public entities for the procurement of commodities or services.

House Bill No. 1341 requires the Office of Management and Budget to adopt rules relating to sending notice of intent to make limited competitive, noncompetitive, and negotiated purchases. The bill requires that the notice state that vendors are permitted to submit bids or proposals for contracts to be awarded. The bill requires the Office of Management and Budget or a purchasing agency to use the current list of persons desiring to provide commodities or services to the state when sending notice of intent to make cooperative, limited competitive, noncompetitive, and negotiated purchases.

Senate Bill No. 2032 requires the Office of Management and Budget to establish and maintain a procurement information web site on the Internet. The bill removes the chairman of the Legislative Council as a member of the Emergency Commission and includes on the Emergency Commission the majority leaders of the Senate and House of Representatives.

House Bill No. 1092 reduces from 60 to 20 percent of the total volume of paper and paper products being purchased by state agencies and institutions which must contain at least 25 percent recycled material. The bill requires the Office of Management and Budget to implement a methodology to track compliance with the purchasing requirement.

House Bill No. 1091 provides that if two or more bids submitted to a state agency contain identical pricing or receive identical evaluation scores, preference must be given to bids submitted by North Dakota vendors.

Senate Bill No. 2201 removes the specific requirements for the membership of a board of directors for a community action agency and provides that each community action agency must have a board of directors that is consistent with federal law concerning community action agencies that are eligible to receive federal funding through a block grant or other appropriate federal sources for social or community services. The bill also provides that a community action program may engage in activities eligible for federal funding, including funding through a block grant for social or community services.

House Bill No. 1012 provides that specialized telecommunications equipment provided under the state program that provides telecommunications relay service to persons who are communications-impaired may not exceed \$2,000 in total cost per device.

House Bill No. 1273 changes a reference with respect to approved vendors for state purchases to reflect a new statutory provision relating to limited partnerships.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

House Bill No. 1069 provides that a Public Employees Retirement System member who is reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994 is entitled to receive retirement credit for the period of qualified military service. The bill changes the definition of a "peace officer" for purposes of the Public Employees Retirement System to require individuals employed after August 1, 2005, be employed 32 hours or more per week and at least 20 weeks each year of employment. The bill authorizes a participating member of the Public Employees Retirement System who becomes a temporary employee to participate in the defined contribution retirement plan upon filing an election with the board within 180 days of transferring to temporary employee status. The bill provides that a surviving spouse beneficiary may elect one or a combination of several of the methods of distribution currently provided for the defined contribution retirement plan, but that a beneficiary who is not the surviving spouse may only choose a lump sum distribution of the accumulated balance. The bill repeals provisions relating to prior service credit under the Public Employees Retirement System.

House Bill No. 1070 provides that for Public Employees Retirement System members who retire on or after July 1, 2009, the final average salary is the average of the highest salary received by the member for any 36 months employed during the last 180 months of employment. The bill provides that if the Public Employees Retirement System Board determines that the fund has obtained a total return on investments of eleven and two-tenths percent or higher for the fiscal year ending June 30, 2005, or June 30, 2006, and the fund has the necessary margin to pay for the benefit, the board is required to authorize a payment to each retiree receiving benefit payments as of the date of the fiscal year and in the amount of 50 percent of the retiree's then current monthly benefit payment.

House Bill No. 1266 authorizes an employee who is eligible for normal retirement who accepts a retirement benefit and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired to elect to permanently waive future participation in the retirement plan or the defined contribution retirement plan and the retiree health program and maintain that employee's retirement status. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on April 12, 2005.

House Bill No. 1172 authorizes the disclosure of Public Employees Retirement System records to a government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

COUNCIL ON THE ARTS

Senate Bill No. 2010 provides that the executive director of the Council on the Arts serves at the pleasure of the chairman of the council and requires the chairman to establish the compensation of the executive director. The bill transfers investment responsibilities for the cultural endowment fund from the Bank of North Dakota to the State Investment Board.

CHILDREN'S SERVICES COORDINATING COMMITTEE

Senate Bill No. 2297 authorizes the Children's Services Coordinating Committee to accept funds, services, or other assistance from any source and provides that those funds are appropriated on a continuing basis to the committee. The bill authorizes regional or tribal service's coordinating committees to accept funds, services, and other assistance from any source and appropriates those funds on a continuing basis. The bill repeals the statutory provision relating to the Children's Services Coordinating Committee unobligated operating fund balance. The provisions of the bill relating to the acceptance of funds and continuing appropriation of those funds are effective through June 30, 2007.

OFFICE OF ADMINISTRATIVE HEARINGS

Senate Bill No. 2070 provides that administrative law judges employed by the director of the Office of Administrative Hearings before August 1, 1995, need not be attorneys at law and may be designated by the director to preside at any administrative or adjudicative proceedings.

INFORMATION TECHNOLOGY DEPARTMENT

House Bill No. 1275 requires executive, legislative, or judicial branch agencies, except for institutions under the control of the State Board of Higher Education, to report to the State Information Technology Advisory Committee regarding the plan for and status on any information technology project that is estimated to cost more than \$250,000.

Senate Bill No. 2248 removes the requirement that certain employees of the Information Technology Department be fingerprinted and requires an employee who has unescorted physical access to the facilities or other security-sensitive areas of the department designated by the Chief Information Officer to submit to a criminal history record check. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on March 31, 2005.

Senate Bill No. 2021 extends from three to five years the period during which an agreement to finance the purchase of software, equipment, or information technology implementation services may be maintained. The bill requires the Information Technology Department to submit any intended financing proposal for the purchase of software, equipment, or implementation services which is in excess of \$1 million to either the Budget Section or the Legislative Assembly before executing the agreement and allows the Budget Section or Legislative Assembly to disapprove of the execution of the financing agreement. Those provisions of Senate Bill No. 2021 were declared to be an emergency measure and became effective upon its filing with the Secretary of State on April 26, 2005.

DEPARTMENT OF COMMERCE

House Bill No. 1203 defines a business incentive and requires recipients of business incentives to enter a business incentive agreement with each grantor of the incentive. The bill requires the business incentive agreement to include a description of the incentive, a statement of the public purpose of the incentive, goals for the incentive, a description of the financial obligation of the recipient if the goals are not met, a commitment by the recipient to continue operations in the jurisdiction in which the incentive is used for five years or more after the benefit date, the name and address of the parent company of the recipient, a list of all financial assistance by all grantors for the project, and the recipient's obligation if the recipient does not

fulfill the business incentive agreement. The bill requires the Department of Commerce to create state grantor recipient report forms and provides that before April 1, 2007, and each April 1 thereafter, each state agency that has granted a business incentive within the last five calendar years must file an annual state grantor report with the Department of Commerce. The bill requires the Department of Commerce to publish a compilation and summary of the results of the state grantor reports for each calendar year beginning in 2007. The bill requires political subdivisions to maintain records of business incentives provided to recipients and to prepare an annual political subdivision grantor report. The provisions of the bill relating to business incentive agreements become effective on January 1, 2006.

Senate Bill No. 2018 requires the director of the Department of Commerce Division of Economic Development and Finance to administer the International Business and Trade Office and allows the director to contract with a third party for the provision of services for the International Business and Trade Office. The bill authorizes the director to establish an International Business and Trade Office Advisory Board. The bill requires the director to implement a certification program through which the division provides training to assist local economic developers in meeting the needs of businesses. The bill establishes an Office of Renewable Energy and Energy Efficiency within the Division of Community Services. The bill requires the commissioner of the Department of Commerce to identify target industries to focus economic development efforts and designate one target industry as a special focus target industry. The bill requires the commissioner to implement a program for use by state agencies to assist the agencies to present to the public a positive image of the state and requires the commissioner to create and implement a business hotline program.

House Bill No. 1185 repeals the provisions of the rural growth incentive program that were to become effective on July 31, 2005, and extends the provisions of that program that were to expire on that date.

House Bill No. 1336 repeals the requirement that the Department of Commerce publish in aggregate form employers' and employees' nine-digit zip codes provided to Workforce Safety and Insurance by employers.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Senate Bill No. 2027 establishes the Commission on Legal Counsel for Indigents, provides the powers and duties of the commission, and requires that the appointment of members to the commission be made before August 1, 2005. The bill provides for a transition of indigent defense services from the Supreme Court to the commission and provides that all contracts for indigent defense services awarded by the Supreme Court after June 30, 2005, must expire no later than December 31, 2005.

TITLE 55
State Historical Society and State Parks
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 55. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

Senate Bill No. 2207 revises the state historical marker program to provide that the State Historical Society may develop and administer a historical marker program for the purpose of identifying local, state, and national points of interest in this state. The bill provides that the society is required to authorize official markers to mark recognized sites and to maintain a historical markers' sites listing. All costs, including production, installation, and maintenance of a historical marker, are the responsibility of the applicant or sponsor of the marker.

House Bill No. 1177 provides that unexpended appropriations for the State Historical Society may be deposited in the historical impact emergency fund. However, the fund may not receive money from the State Historical Society's unexpended appropriation when the fund balance is greater than \$250,000. When the historical impact emergency fund balance is greater than \$250,000, any unexpended appropriations for the State Historical Society are canceled.

Senate Bill No. 2228 appropriates \$350,000 from the permanent oil tax trust fund to the Parks and Recreation Department to provide a one-time grant to the International Music Camp to assist with the construction costs of the International Arts Center to be located at the International Music Camp at the International Peace Garden. The bill became effective April 26, 2005.

TITLE 57

Taxation

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 57. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to taxation may be classified in these subject areas: tax administration; property taxes; income taxes; financial institutions taxes; sales, use, and motor vehicle excise taxes; fuels taxes; oil and gas taxes; coal taxes; tobacco taxes; and emergency services communications systems excise taxes.

TAX ADMINISTRATION

House Bill No. 1107 allows the Tax Commissioner to participate in the United States Department of Treasury offset program and provides a continuing appropriation of the amount needed for fees for participation in the program.

Senate Bill No. 2132 limits a taxpayer to 180 days after the due date of a tax return or payment to file a claim for a refund or credit based upon a claim of unconstitutionality of the tax. This provision applies to any tax imposed by state law, except property taxes.

House Bill No. 1006 increases the annual salary of the Tax Commissioner from \$73,821 through June 30, 2005, to \$76,046 through June 30, 2006, and \$79,077 after June 30, 2006.

House Bill No. 1015 further increases the annual salary of the Tax Commissioner to \$76,774 through June 30, 2006, and \$79,845 after June 30, 2006.

Senate Bill No. 2081 provides for administration of homestead credit and estate tax refunds by the Tax Commissioner and State Treasurer.

PROPERTY TAXES

Senate Bill No. 2188 reduces the minimum capitalization rate used in the agricultural property valuation formula for property tax purposes from 9.5 to 8.9 percent for taxable year 2005 and 8.3 percent for taxable years after 2005.

Senate Bill No. 2018 reduces from 3 to 1.5 percent the portion of assessed value used to determine taxable valuation of wind turbine electric generation units with a generation capacity of 100 kilowatts or more. To qualify for the reduced taxable valuation, a generation unit must have a purchased power agreement executed after April 30, 2005, and before January 1, 2006, and construction must begin after April 30, 2005, and before July 1, 2006. The reduced taxable valuation applies to that property for the duration of the initial purchased power agreement for that generation unit.

House Bill No. 1333 eliminates the confidential status of information filed by a Class I railroad for property tax purposes.

Senate Bill No. 2267 changes the funding method for the state matching program for senior citizen services and programs by dedicating sales, use, and motor vehicle excise tax revenues

equal to the amount of revenue that would have been generated by a levy of two-thirds of one mill on the taxable valuation of all property in the state subject to the county or city levy for senior citizen services and programs in the previous year. A matching grant is provided by continuing appropriation from the senior citizen services and programs fund to each eligible county, equal to two-thirds of the amount levied in dollars in the county for the taxable year, but the matching fund grant applies only to a levy of up to one mill. A statement of intent is included, providing that counties or cities should allocate an amount equal to one-third of one mill of property tax revenue from their funds raised or received under their general fund levies or state aid distribution fund allocations.

House Bill No. 1354 increases the maximum county property tax levy for a county veterans' service officer from 1.25 to 2 mills.

House Bill No. 1398 increases the maximum county levy for regional or county correctional centers from 5 to 10 mills and allows counties to contract for services from another public or private entity for regional or county corrections.

Senate Bill No. 2065 increases the maximum levy for county comprehensive health insurance for employees from 4 to 8 mills.

House Bill No. 1182 allows a political subdivision, excluding a school district or park district, to use funds from its insurance reserve fund levy for payment of workforce safety and insurance contributions, premiums, judgments, and claims.

Senate Bill No. 2212 allows the 15-mill school board levy for asbestos abatement to also be used for repair, replacement, or modification of any heating, ventilation, or air-conditioning systems.

House Bill No. 1263 allows the 15-mill school board levy for asbestos abatement to also be used for mercury and hazardous substance abatement or removal.

Senate Bill No. 2157 increases the income limits to qualify to the homestead credit by \$500 in each income classification. The bill increases the reduction in taxable valuation in homestead property for eligible individuals by approximately 50 percent.

House Bill No. 1517 provides that land on which a greenhouse is located is agricultural property for property tax purposes if the land is used for a nursery or other purposes associated with the greenhouse. The bill also provides a property tax exemption for a greenhouse or other building used primarily for horticultural or nursery products from seed, cuttings, or roots, if the structure is not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for the display or sale of grown horticultural or nursery products is not eligible for the property tax exemption.

House Bill No. 1175 requires the county auditor to ascertain whether or not an unsatisfied lien for homestead credit for special assessments exists against state property before a transfer of the property is recorded. The bill provides that renaissance zone property tax exemptions become effective on the date of completion of rehabilitation of the property. The bill provides that certifications of centrally assessed property valuations from the Tax Commissioner to county auditors include true and full valuation instead of assessed valuation of property. The bill requires that an assessment notice of increase to a property owner must include true and full valuation of the property instead of assessed valuation. The bill adds rural electric cooperatives

and municipal utilities to the utilities services that are considered as criteria for assessment of a structure, such as a mobile home. The bill also repeals obsolete provisions regarding railroad property assessment and homestead lands.

INCOME TAXES

House Bill No. 1108 reduces the highest corporate income tax rate from 7 to 6.5 percent beginning in 2007. The bill also decouples North Dakota corporate income tax provisions from the federal domestic production activities deductions and extraterritorial income exemption allowed for corporations conducting international business operations. The decoupling provisions are effective beginning in 2005.

Senate Bill No. 2217 establishes a biodiesel partnership in assisting community expansion fund at the Bank of North Dakota to provide funds for interest rate buydowns on loans to biodiesel production facilities. The bill provides corporate and individual income tax credits of five cents per gallon for biodiesel fuel blended by a fuel supplier and in the amount of 10 percent per year for five years of a biodiesel fuel seller's direct costs to adapt or add equipment to a facility to sell biodiesel. The bill provides a sales tax exemption for equipment sold to a licensed facility to enable the facility to sell biodiesel fuel.

Senate Bill No. 2045 requires passthrough entities, such as S corporations, partnerships, trusts, limited liability companies, and limited liability partnerships, to choose between the options of filing a combined report in North Dakota or withholding North Dakota income taxes on distributions to nonresident members of the passthrough entity.

Senate Bill No. 2281 makes the agricultural business investment tax credit available to corporations. The bill limits the credit to investments in the first 10 businesses that qualify. The bill increases from \$20,000 to \$50,000 the annual credit a taxpayer may obtain for agricultural business investments and imposes a lifetime limit of \$250,000 in credits. The bill reduces from 15 to 5 years the time which an investment tax credit may be carried forward. The bill allows a credit for a taxpayer whose investment in an agricultural commodity processing facility was made before 2005 and did not qualify for the tax credit because of the limitation on the seed capital investment tax credit. This credit is 30 percent of the amount invested by the taxpayer, but the taxpayer may claim no more than one-fourth of the credit in any taxable year.

Senate Bill No. 2032 eliminates an obsolete provision for an income tax deduction for investments in a venture capital corporation. The bill makes the seed capital investment tax credit available to corporations and passthrough entities. The bill limits qualified investments in a qualified business to a maximum of \$500,000 for which the credit may be claimed. The bill allows investments made before 2005 which did not qualify for the tax credit because of the limitation in effect at that time to claim a credit of 45 percent of the amount invested in a qualified business, with a minimum qualifying investment of \$5,000 and maximum investment to obtain a credit of \$250,000. For these taxpayers, no more than one-fourth of the credit may be claimed in any taxable year.

Senate Bill No. 2146 provides compensation for resident veterans called to active duty after December 5, 1992. The bill provides that the compensation is not considered income for individual income tax purposes.

Senate Bill No. 2362 provides an individual income tax deduction for income of National Guard and reserve volunteers mobilized for federal active duty.

House Bill No. 1041 allows an individual income tax refund for taxable years 2001 and 2002 for a nonresident whose military income was used to determine the initial tax on North Dakota taxable income. The bill allows the refund claim to be filed until April 15, 2006.

House Bill No. 1052 allows the long-term capital gain deduction on individual income tax Form ND-1 to be used only to the extent the long-term gain is allocated to North Dakota.

Senate Bill No. 2391 allows an income tax credit for individuals who make planned gifts to qualified North Dakota nonprofit organizations. The credit equals 20 percent of the present value of the charitable gift portion of planned gifts made by the taxpayer, with a maximum credit of \$5,000.

Senate Bill No. 2103 allows the state court administrator, on behalf of state courts, to file claims for income tax setoffs for court-ordered fines, fees, or costs due to the state.

House Bill No. 1144 requires income tax withholding of 5.54 percent of any lottery prize of more than \$5,000.

House Bill No. 1474 provides an individual income tax deduction for expenses or lost wages incurred by an individual who makes a donation of a human organ. The deduction is limited to \$10,000 of qualified expenses, which includes lost wages not compensated by sick pay and unreimbursed medical expenses to the extent those expenses are not deducted in computing federal taxable income.

House Bill No. 1314 provides that the income tax credit for installation of geothermal, solar, or wind energy devices may be carried forward for five tax years. The bill also allows a group of corporations filing a North Dakota consolidated tax return under the combined reporting method to claim the credit against aggregate North Dakota tax liability on the consolidated return.

House Bill No. 1145 allows joint state income tax return filings by spouses, one of whom is a resident and the other a nonresident.

FINANCIAL INSTITUTIONS TAXES

Senate Bill No. 2158 allows a credit against financial institutions taxes in the amount of 50 percent of contributions for tuition scholarships for participants in the rural leadership North Dakota program conducted through the North Dakota State University Extension Service. The credit is limited to \$2,500.

Senate Bill No. 2140 requires financial institutions that are members of a unitary group and conducted all of their business in North Dakota to file financial institutions tax returns on a combined report and will allow them to deduct intercompany dividends paid within the unitary group in computing taxable income. The bill will allow the Tax Commissioner an additional two years to audit a refund claim for income purposes to be consistent with the time allowed to audit returns reporting additional tax due. The bill removes the definition of financial organization from the Uniform Division of Income Tax Act because those entities are subject to apportionment under the provisions of the financial institutions tax laws.

SALES, USE, AND MOTOR VEHICLE EXCISE TAXES

House Bill No. 1042 provides for appointment of two members of the House of Representatives and two members of the Senate to represent North Dakota on the Streamlined Sales Tax Governing Board and one member of the House of Representatives and one member of the Senate to represent North Dakota on the Streamlined Sales Tax State and Local Advisory Council.

House Bill No. 1043 brings North Dakota into compliance with the Streamlined Sales and Use Tax Agreement. The bill inserts appropriate statutory references to farm machinery and alcoholic beverages gross receipts taxes to allow those taxes to continue to be collected by cities and counties at the same rate they are currently collected under the sales tax. The bill provides that any city or county home rule taxes on farm machinery, farm irrigation equipment, farm machinery repair parts, or alcoholic beverages become gross receipts taxes on January 1, 2006. The bill provides that a cap provided by city or county home rule for sales taxes on purchase of a single item will be replaced with a refund provision allowing the retailer to collect the full amount of city or county sales taxes and allowing the purchaser to claim a refund of the difference between the amount paid and the amount that would have to be paid if the cap was in place. The bill creates a section to provide that sales taxes will continue to apply to cigarettes, cigars, and other tobacco products, which was inadvertently eliminated by 2003 legislation. The bill creates use tax imposition provisions for the farm machinery gross receipts tax and alcoholic beverage gross receipts tax which were created in 2003 but did not include use tax provisions. The bill changes the 1 percent lodging tax for Lewis and Clark Bicentennial funding into a gross receipts tax to satisfy the requirements of the Streamlined Sales and Use Tax Agreement. The revenue from the lodging tax will be used for the same purposes as provided in the legislation that established the tax.

House Bill No. 1015 moves the effective date for House Bill No. 1043 Streamlined Sales and Use Tax Agreement compliance from January 1, 2006, to October 1, 2005.

Senate Bill No. 2050 changes the effective date of Streamlined Sales and Use Tax Agreement compliance provisions from January 1, 2006, to October 1, 2005.

Senate Bill No. 2379 allows the provider of bundled services, including telecommunications services to omit collection of sales taxes on nontaxable services included in the bundled services, if the provider can reasonably identify the nontaxable portion of the services from its records.

Senate Bill No. 2359 provides that retailer compensation is available to a remote seller or certified service provider under streamlined sales tax agreements for sales and use tax purposes. The bill allows a retailer to authorize a certified service provider to claim on behalf of the retailer any administrative compensation to which the retailer is entitled. The bill provides that a remote seller is entitled to administrative compensation expenses of 1.5 percent of the tax due without limitation to the \$85 per month limit on compensation available to retailers who are not remote sellers.

Senate Bill No. 2123 removes a motor vehicle excise tax exemption provision that allowed a resident disabled veteran up to 60 days to acquire a distinctive license plate from the Department of Transportation after acquisition or leasing of a vehicle.

House Bill No. 1179 creates a sales tax exemption for purchases by an assisted living facility for the use or benefit of its patient or occupant.

Senate Bill No. 2176 provides a sales tax exemption for the purchase of precious metal bullion.

House Bill No. 1498 provides a sales tax exemption for machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of equipment of a new or existing oil refinery or gas processing plant.

Senate Bill No. 2217 provides a sales tax exemption for equipment sold to a licensed facility to enable the facility to sell biodiesel fuel.

Senate Bill No. 2170 provides a sales tax exemption for carbon dioxide used for enhanced recovery of oil or natural gas.

House Bill No. 1368 provides a sales tax exemption for purchases made by an emergency medical services provider for the use or benefit of its patient or occupant.

House Bill No. 1496 provides a sales tax exemption for purchase of hydrogen to power an internal combustion engine or fuel cell and for equipment used directly and exclusively in production and storage of hydrogen by a hydrogen generation facility in this state. The bill also provides a special fuels tax exemption for purchases of hydrogen to power an internal combustion engine or fuel cell.

House Bill No. 1055 allows the farm machinery gross receipts tax and sales, use, and motor vehicle excise tax credits for insurance proceeds for a stolen or destroyed motor vehicle or farm machine to be applied against more than one replacement purchase.

Senate Bill No. 2208 changes a statutory reference in the motor vehicle excise tax law because definitions under the motor vehicles title were renumbered because of the addition of a definition of a child restraint system.

Senate Bill No. 2101 removes the 1,000-pound limit on weight of an all-terrain vehicle under the motor vehicle excise tax laws.

House Bill No. 1342 removes the definition of all-terrain vehicle under the motor vehicle excise tax laws and substitutes a definition of off-highway vehicle.

FUELS TAXES

House Bill No. 1478 reduces the motor vehicle fuels tax for E-85 fuel to one cent per gallon, and the revenue of the one-cent tax is entirely allocated to the township highway aid fund. The bill defines E-85 fuel as a blend of ethanol and gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 60 percent by volume.

Senate Bill No. 2012 increases motor vehicle fuels and special fuels tax rates from 21 cents per gallon to 23 cents per gallon. The bill also allows an American Indian to claim a refund of motor vehicle fuel or special fuel taxes on fuel purchased from a retail fuel dealer located on the Indian reservation where the American Indian is an enrolled member. The refund provision applies to purchases made after December 31, 2004.

House Bill No. 1015 provides a statement of legislative intent regarding the fuels tax refund provision of Senate Bill No. 2012 that the refund provision may not be construed to preclude

claims for fuel tax refunds by tribal members or tribal entities for taxes on purchases made before January 1, 2005.

OIL AND GAS TAXES

House Bill No. 1404 provides that beginning in 2007, the maximum annual oil and gas gross production tax revenue deposit in the oil and gas impact grant fund is increased from \$5 million to \$6 million.

House Bill No. 1078 provides that all calculations of the oil and gas gross production tax, including production, distribution, and claims for credit of refund must be based on the month of production.

Senate Bill No. 2018 eliminates language from the provisions governing deposits in the permanent oil tax trust fund requiring transfers to the permanent oil tax trust fund to be made before calculation of any general fund revenue balance available for transfer to the budget stabilization fund.

COAL TAXES

House Bill No. 1268 provides sales, use, and coal conversion facilities privilege tax exemptions and rate reductions for substantial investments by a power plant operator for environmental upgrade or repowering. The bill defines environmental upgrade as an investment of more than \$25 million in machinery, equipment, and related facilities for reducing emissions or increasing efficiency. The bill defines repowering as an investment of more than \$200 million to modify or replace the process used to convert lignite coal into electric power. The bill provides a sales and use tax exemption for environmental upgrade and repowering equipment. The bill provides that repowering of an electrical generating plant will qualify the plant for the coal conversion facilities privilege tax reduction available to newly constructed electrical generating plants, which would result in a 90 percent reduction in the tax for five years after repowering.

TOBACCO TAXES

House Bill No. 1522 eliminates the tobacco tax exemption that allows an individual to possess up to one carton of untaxed cigarettes.

EMERGENCY SERVICES COMMUNICATIONS SYSTEMS EXCISE TAXES

House Bill No. 1219 allows the 911 coordinator or public safety answering point to use unpublished names and telephone numbers to notify a person of an emergency.

House Bill No. 1016 moves the State Radio Division from the Office of Management and Budget to the Department of Emergency Services, under the direction of the Adjutant General. The bill makes appropriate changes in the emergency services communications systems excise tax laws.

TITLE 58
Townships
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 58. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1417 changes the method of determining the winner of a township election in the event of a tie vote from a coin flip to a drawing of names. The bill provides that a candidate involved in a tie vote may withdraw the candidate's name from consideration if the candidate is willing to sign a statement to that effect. The bill also provides that if no candidates remain, the office must be filled according to the rules for filling a vacancy in that office.

House Bill No. 1279 authorizes a board of township supervisors to establish institutional controls that address environmental concerns with the Department of Health. The bill provides that institutional controls are restrictions on the use and management of real property that contain or prevent migration of regulated substances or other pollution or contamination or protect receptors from exposure or the threat of exposure to regulated substances or other pollution or contamination. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on March 31, 2005.

TITLE 59
Trusts, Uses, and Powers
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted which primarily affected North Dakota Century Code Title 59. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

June 2005

TITLE 60
Warehousing and Deposits
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 60. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

House Bill No. 1142 limits the amount that any person may receive for an insolvency from the credit-sale contract indemnity fund to the lesser of 80 percent of the amount owed to the person or \$280,000. It also establishes that the chronological order of insolvencies is determined by the order in which the Public Service Commission is appointed as trustee.

Senate Bill No. 2136 requires roving grain buyers to obtain an annual license at a cost of \$250. Each such license expires on July 31.

House Bill No. 1167 provides that a warehouseman is not required to receive grain for storage. It also requires the warehouseman to conspicuously post a publication indicating whether storage will be available and whether grain will be accepted via cash or a credit-sale contract.

TITLE 61

Waters

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 61. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

House Bill No. 1016 changes the name of the Division of Emergency Management to the Division of Homeland Security.

House Bill No. 1021 appropriates \$125,987,998 to the State Water Commission. Of this total, \$54,013,116 is from the resources trust fund and \$29,963,873 is from the water development trust fund. The bill authorizes the State Engineer to employ personnel necessary for the operation and maintenance of the Devils Lake Outlet. The bill also increases the bonding ceiling contained in North Dakota Century Code Section 61-02.1-02.1 by an additional \$7 million plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves during the 2005-07 biennium.

House Bill No. 1153 deletes the specific authority of the State Water Commission to issue bonds for construction of an outlet from Devils Lake and extends the general authority of the commission to issue bonds as provided in North Dakota Century Code Chapter 61-02.1 through June 30, 2007. The bill deletes the condition that an order for injunctive relief has not been issued by a court of competent jurisdiction enjoining construction of the flood control or reduction project for the issuance of bonds for the Grand Forks flood control project before bonds for this project may be issued, conditions for the issuance of bonds for Devils Lake flood control, and conditions for the issuance of bonds for completion of the Garrison Diversion Unit Project. The bill repeals Section 61-02.1-02 which imposed limitations for specific flood control projects. The bill also increases the authority of the State Water Commission to issue bonds to be paid from the resources trust fund and the water development trust fund from \$20 million to \$60 million. The bill became effective April 13, 2005.

House Bill No. 1274 deletes the requirement that large industrial users pay at least the proportionate costs of the Southwest Pipeline Project based on the large industrial users' proportionate capacity of the Southwest Pipeline Project. The bill became effective April 6, 2005.

House Bill No. 1399 provides that an assessment levied by a water resource district for snagging, clearing, and maintaining a natural watercourse and the debrisment of bridges and low water crossings may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. The bill also allows a water resource district board to undertake a project that will benefit lands outside the water resource district's boundaries if the board of each district containing lands benefited by the project approves the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by the project must also approve and levy the assessment by a vote of two-thirds of its members. The bill allows a water resource board to still undertake a project that may benefit lands outside the district's boundaries if the board finances the cost of the project and does not assess land outside the boundaries of the district. The bill became effective March 16, 2005.

Senate Bill No. 2074 changes the name of the Municipal Bond Bank to the Public Finance Authority.

Senate Bill No. 2126 adds a member appointed by the Upper Sheyenne River Joint Water Resource Board to the Devils Lake Outlet Management Advisory Committee.

Senate Bill No. 2155 declares the policy of the Legislative Assembly concerning the use of ground water for irrigation. The bill provides the Legislative Assembly finds that use of ground water for irrigation purposes is vitally important to the economic future of the state. The reliance on processing plants for the consistent quality resulting from irrigation is an important factor in preserving the state's reputation for quality agricultural production. The bill provides that it is declared necessary and in the public interest that the state by and through the State Water Commission strongly discourages the conversion of agricultural water permits to any other use. Further, the Legislative Assembly declares that any feasible or reasonable alternative supply of water be made available for municipal or domestic use to enable the continued use of ground water for irrigated agriculture and agricultural processing.

Senate Bill No. 2293 creates a procedure for water resource district water supply systems to convert to water districts. The bill became effective March 25, 2005.

Senate Bill No. 2295 authorizes water districts to enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the water district to secure payment of the district's obligations created by the contracts. The bill authorizes the Garrison Diversion Conservancy District to acquire, construct, improve, and own the Red River Valley Water Supply Project and authorizes the Lake Agassiz Water Authority to enter contracts to provide for the authority to acquire bulk water from the conservancy district and to enter water supply contracts with member cities and water districts for the resale of water. The bill authorizes Minnesota cities to join the Lake Agassiz Water Authority provided a portion of the Minnesota city is located within five miles of this state or the city uses the Red River for its primary water supply. The bill adds one member from a Minnesota city with a population of more than 30,000 and which is located within five miles of this state to the Lake Agassiz Water Authority Board of Directors. The initial Minnesota city representative is from the city of Moorhead. The bill also authorizes the Lake Agassiz Water Authority to issue revenue bonds for its own benefit or for the benefit of the Garrison Diversion Conservancy District.

June 2005

TITLE 62.1
Weapons
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 62.1. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

Senate Bill No. 2341 removes a cross-reference to a provision of law that provided for conditional discharge for a first-time drug offender, which was repealed.

House Bill No. 1205 removes the proficiency test, consisting of a course of fire, for a concealed weapons permit.

House Bill No. 1086 allows private security personnel while on duty and for the purpose of delivering or receiving money used at a liquor establishment or gaming site to possess a firearm or dangerous weapon.

House Bill No. 1505 removes the limitation on allowing the purchase of a rifle or shotgun from solely within a state contiguous to this state and the transportation of that rifle or shotgun into this state.

Senate Bill No. 2219 provides that information collected as part of a concealed weapons permit is confidential except when released for law enforcement purposes to a court or under subpoena.

TITLE 63
General Provisions
Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 63. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

Senate Bill No. 2280 clarifies the duties of county and city officials with respect to the control or eradication of weeds and pests and it raises the penalties for failure to comply with the Act from \$50 per day with a maximum penalty of \$2,500 per year to \$80 per day with a maximum penalty of \$4,000.

June 2005

TITLE 64
Weights, Measures, and Grades
Summary of Bills Enacted by 2005 Legislative Assembly

There was no legislation enacted which primarily affected North Dakota Century Code Title 64. Bills primarily affecting other titles may affect this title, but those bills are not summarized in this memorandum.

June 2005

TITLE 65

Workforce Safety and Insurance

Summary of Bills Enacted by 2005 Legislative Assembly

This memorandum summarizes 2005 legislation primarily affecting North Dakota Century Code Title 65. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to Workforce Safety and Insurance may be classified in these subject areas: benefits and administration.

BENEFITS

House Bill No. 1120 for purposes of workers' compensation, clarifies and modifies how the average weekly wage is determined and modifies who is a child or sibling for purposes of determining eligibility of benefits, expands the workers' compensation scholarship fund, authorizes the organization to disclose certain medical information to the employer, and clarifies the organization may release to a health care provider the Social Security number of an employee filing a claim for benefits.

House Bill No. 1171 modifies the definition of "permanent total disability," provides a definition of "temporary total disability," modifies the options for rehabilitation services, modifies the required elements of a vocational consultant's report, and modifies rehabilitation awards.

House Bill No. 1410, as part of a bill that addresses bloodborne pathogens and other reportable diseases, modifies the workers' compensation definition of "compensable injury" and updates cross-references.

House Bill No. 1506 modifies the method of calculating the nondependency payments in certain cases of death of an injured worker. This bill has a retroactive application to November 29, 2004.

Senate Bill No. 2351 modifies the formula for determining the additional benefit payable to certain claimants who have been presumed retired.

ADMINISTRATION

House Bill No. 1016, as part of the Department of Emergency Services appropriations bill, changes a workers' compensation law reference from the state Division of Emergency Management to the state Division of Homeland Security.

House Bill No. 1122 creates a lien for the organization on damages recovered in certain cases in which there is an injury through the negligence of a third person, modifies the method of calculating the attorney's fees the organization shall pay to an injured worker's attorney in a case of injury through the negligence of a third person, and clarifies that an injured worker may not receive a double recovery by receiving benefits from two states on the same injury.

House Bill No. 1123 addresses employer premium payments. The bill expands the option to make installment payments of premiums, clarifies the possible repercussions if an employer does not timely pay premiums, modifies some penalty and payment provisions if an employer

does not pay premiums, and addresses coverage requirements for out-of-state employers or employees.

House Bill No. 1125 provides a continuing appropriation for the funds deposited in the workforce safety insurance fund for the purpose of funding safety programs; clarifies the organization is required to hold a public hearing on a change in the minimum premium rate; clarifies the rules adopted relating to the employer premium calculation programs are not subject to the Administrative Agencies Practice Act; removes the specified amount of 5 percent for the risk management premium discount program; provides for incentives to employers for prompt filing of claims for benefits; and modifies how an employer's coverage is calculated based on the weekly wage, specifically addressing the wages paid to the employer's child.

House Bill No. 1199 addresses the Workforce Safety and Insurance Board of Directors. The bill provides that of the six employers representative of the 11-member board, at least one must be an employer at large representative; provides that except for the employer at large representative, the employer representatives on the board must be a principal owner, chief executive officer, or chief financial officer of the employer; and provides the board shall interview an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the Governor.

House Bill No. 1336 removes the requirement that the organization collect and distribute to the Department of Commerce all employer and employee zip codes.

House Bill No. 1531 provides that the discount rate used in evaluating the financial reserves of the organization may not exceed 6 percent. The bill also provides that the level of financial reserves plus surplus must be at least 120 percent but may not exceed 140 percent of the actuarially established discounted reserve.