

OCCUPATIONS AND PROFESSIONS

CHAPTER 356

HOUSE BILL NO. 1204 (Representatives Ekstrom, S. Kelsh) (Senator Nichols)

LANDSCAPE ARCHITECT REGULATION

AN ACT to create and enact two new sections to chapter 43-03 of the North Dakota Century Code, relating to regulation of landscape architects; to amend and reenact sections 43-03-01, 43-03-02, 43-03-08, 43-03-09, 43-03-10, 43-03-11, 43-03-12, 43-03-13, 43-03-16, 43-03-17, 43-03-18, 43-03-19, 43-03-20, 43-03-21, 43-03-22, and 43-03-23 of the North Dakota Century Code, relating to the registration of architects and landscape architects; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-03-01 of the North Dakota Century Code is amended and reenacted as follows:

43-03-01. Definitions. In this chapter, unless the context or the subject matter otherwise requires:

1. "Architect" means an individual who is registered as an architect under this chapter.
2. "Board" means the state board of architecture.
2. ~~"Architect" means an individual who is registered under the provisions of this chapter.~~
3. "Landscape architect" means an individual who practices landscape architecture.
4. "Landscape architecture" does not include the practice of engineering and practice of professional engineering as defined under section 43-19.1-02.

SECTION 2. AMENDMENT. Section 43-03-02 of the North Dakota Century Code is amended and reenacted as follows:

43-03-02. Persons exempt from regulations.

1. The architect registration provisions of this chapter do not apply to the following:
4. ~~A a person making plans and specifications for a building to be constructed by or for that person:~~

2. ~~A;~~ a person supervising the erection, enlargement, or alteration of a building being constructed by or for that person-
 3. ~~A;~~ a person preparing for a school board plans and specifications for, or supervising the erection or alteration of, one-room or two-room school buildings costing not to exceed five thousand dollars-
 4. ~~The;~~ or an employee of an architect acting under that architect's instruction, control, and supervision in preparing plans and specifications for the erection, enlargement, or alteration of buildings.
2. The landscape architect registration provisions of this chapter do not apply to:
- a. An architect, a professional engineer, or a land surveyor in the course of providing professional services for which otherwise licensed or registered;
 - b. A nursery worker, gardener, landscape designer, or landscape contractor in the course of preparing planting plans or installing plant material, to the extent these activities do not impact the public health, safety, or welfare; or
 - c. An individual in the course of planning or otherwise caring for that individual's property.

SECTION 3. AMENDMENT. Section 43-03-08 of the North Dakota Century Code is amended and reenacted as follows:

43-03-08. Board to adopt rules and regulations. The board ~~shall~~ may adopt ~~the following rules and regulations:~~

1. To govern ~~its~~ board proceedings.
2. For the examination of candidates for registration.
3. For the regulation of the practice of architecture and landscape architecture.

~~Such rules and regulations must be consistent with the provisions of this chapter and the laws of this state. The board, from time to time, may amend, modify, and repeal such rules and regulations.~~

4. For education of registration applicants.
5. For continuing education of registrants.

SECTION 4. AMENDMENT. Section 43-03-09 of the North Dakota Century Code is amended and reenacted as follows:

43-03-09. Practice of architecture without a license Unauthorized practice prohibited. A person may not practice architecture as a ~~profession~~ in this state unless ~~that person has obtained from the board a certificate of registration and is registered as an architect~~ under this chapter or otherwise authorized by the board. After December 31, 2004, a person may not practice landscape architecture in this

state unless registered as a landscape architect under this chapter or otherwise authorized by the board.

SECTION 5. AMENDMENT. Section 43-03-10 of the North Dakota Century Code is amended and reenacted as follows:

43-03-10. Regulation of use of ~~term licensed architects terms.~~

1. A person may not use the title or designation "registered architect", "licensed architect" ~~nor,~~ any variation of ~~the same~~ those terms, ~~nor~~ or any other words, letters, or device to indicate that person is a ~~licensed~~ an architect, without being authorized to practice architecture in this state unless that person is registered as an architect in accordance with the provisions of under this chapter. In a copartnership of licensed architects, each member of the partnership shall hold a license certificate of registration to practice.
2. A person may not use the title or designation "registered landscape architect", "licensed landscape architect", any variation of those terms, or any other words, letters, or device to indicate that person is a landscape architect authorized to practice landscape architecture in this state unless that person is registered as a landscape architect under this chapter.

SECTION 6. AMENDMENT. Section 43-03-11 of the North Dakota Century Code is amended and reenacted as follows:

43-03-11. Application for examination - Fee. ~~Before a person an individual~~ may take the examination for registration as an architect or a landscape architect, that person individual shall make an application to the board submitting satisfactory evidence of having the required qualifications and shall pay a an examination fee of fifty not more than one hundred dollars. When If reexamination is required, the applicant shall pay a reexamination fee of twenty-five not more than one hundred dollars for a reexamination. The fee for reexamination may be waived in whole or in part by the board.

SECTION 7. AMENDMENT. Section 43-03-12 of the North Dakota Century Code is amended and reenacted as follows:

43-03-12. Board to issue certificates of registration. ~~The board, in accordance with the provisions of this chapter, shall examine those desiring to use the title of architect or to practice as architects in this state applicants for registration and shall issue certificates of registration to those who are qualified. The board may administer an examination or may recognize a board-approved examination of a nationally recognized entity.~~

SECTION 8. AMENDMENT. Section 43-03-13 of the North Dakota Century Code is amended and reenacted as follows:

43-03-13. Qualifications. ~~An applicant for registration as an architect shall have all of the following qualifications:~~

1. ~~Be~~ Must be at least eighteen years of legal age;
2. ~~Be~~ Must be of good moral character, with rejection possible on the basis of the following:

- a. Conviction of an offense determined by the board to have a direct bearing upon an applicant's ability to serve the public as an architect or a landscape architect, or the board determines, following conviction of an offense, that the applicant is not sufficiently rehabilitated under section 12.1-33-02.1-~~2~~;
 - b. Misstatement or misrepresentation of fact by the applicant in connection with that ~~person's~~ individual's application-; or
 - c. Violation of any of the standards of conduct required of ~~licenseholders and set forth in the statutes.~~ registrants;
3. ~~Have~~ Must have successfully completed an examination for registration-;
 4. ~~Have had what~~ In the case of an architect, must have the practical experience and academic training as is specified in the current guidelines published by the national council of architectural registration boards if such guidelines are adopted by the board; and
 5. Must satisfy registration criteria adopted by the board.

SECTION 9. AMENDMENT. Section 43-03-16 of the North Dakota Century Code is amended and reenacted as follows:

43-03-16. Certificates of registration issued by board - Result of examinations recorded by secretary of board. The result of every examination for registration as an architect, or a landscape architect and the evidence of qualifications, must be recorded by the secretary of the board, ~~and the~~. The board shall issue a certificate of registration to every ~~person~~ individual who ~~has passed~~ passes the examination or otherwise is entitled to receive the certificate. The secretary of the board shall maintain a list of architects and landscape architects certified under this section. This list must contain the ~~architect's~~ registrant's name, current business address, certification number, and the expiration date of the ~~architect's~~ certificate.

SECTION 10. AMENDMENT. Section 43-03-17 of the North Dakota Century Code is amended and reenacted as follows:

43-03-17. Certificates of registration - Term - Renewal. A certificate of registration as an architect or a landscape architect must be issued for ~~one year~~ upon the payment of the proper fee and, upon a term established by the board. Upon the payment of the proper fee, a certificate of registration may be renewed without examination.

SECTION 11. AMENDMENT. Section 43-03-18 of the North Dakota Century Code is amended and reenacted as follows:

43-03-18. Fees.

1. The following ~~must be the registration and renewal fees required to be paid by an architect~~ apply to architects and landscape architects:
4. a. Following examination, ~~a~~ an architect registration fee of not more than one hundred dollars, as set by the board.

- ~~2.~~ b. When examination is not necessary under section 43-03-15, ~~a~~ an architect registration fee of not more than one hundred dollars, as set by the board.
- ~~3.~~ c. ~~An annual architect registration renewal fee of not~~, which need not be collected annually, but which must be based on no more than one hundred dollars per year, as set by the board.

d. Following examination, a landscape architect registration fee of not more than five hundred dollars, as set by the board.

e. A landscape architect registration renewal fee, which need not be collected annually, but which must be based on no more than five hundred dollars per year, as set by the board.
2. If in any year the board incurs expenses related to regulation of landscape architects which are in excess of the income generated through landscape architect fees for that year, the board may assess a special fee to cover these excess expenses. The board may continue an annual special fee assessed under this subsection until the excess obligations are met. Landscape architect fees set by the board may not exceed the amount reasonably necessary to regulate the profession of landscape architecture.
3. If in any year the board incurs expenses related to regulation of architects which are in excess of the income generated through architect fees for that year, the board may assess a special fee to cover these excess expenses. The board may continue an annual special fee assessed under this subsection until the excess obligations are met. Architect fees set by the board may not exceed the amount reasonably necessary to regulate the profession of architecture.

SECTION 12. AMENDMENT. Section 43-03-19 of the North Dakota Century Code is amended and reenacted as follows:

43-03-19. Effect of failure to pay renewal fee.

1. If the holder of a certificate of registration as an architect or a landscape architect fails to pay the ~~annual~~ renewal fee or a special fee when due, that ~~person's~~ individual's certificate must be revoked unless that ~~person's~~ individual's application for renewal is made within one year after the expiration of that ~~person's~~ individual's certificate. ~~That person~~ If application for renewal is made within one year, that individual then shall pay the ~~renewal~~ delinquent fee set by the board under section 43-03-18. If a former holder applies for renewal more than one year after the expiration of that ~~person's~~ individual's certificate, that ~~person~~ individual may, in the board's discretion, be reinstated upon payment of a fee of ~~one hundred dollars~~ as set by the board.
2. ~~No~~ A certificate may not be revoked for nonpayment of fees unless the secretary of the board has first given at least thirty days' notice by certified mail to the holder of such certificate. The notice must be directed to the last-known address or place of residence of the delinquent.

SECTION 13. AMENDMENT. Section 43-03-20 of the North Dakota Century Code is amended and reenacted as follows:

43-03-20. Revocation of registration. The board, after a hearing upon thirty days' written notice to the certificate holder thereof, may revoke any certificate of registration of an architect or a landscape architect upon proof that:

1. Such certificate has been obtained by fraud or misrepresentation;
2. The holder of such certificate has been guilty of malfeasance, fraud, gross incompetency, or negligence in connection with the holder's practice of architecture or landscape architecture;
3. The holder of such certificate has allowed a nonregistered person or entity ~~persons or entities~~ person to practice as an architect by the device of permitting the holder's name or stamp to be placed upon drawings, or other contract documents, not prepared by the holder or under the holder's direct supervision;
4. The holder of such certificate has been convicted of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as an architect or landscape architect; or that, following conviction of an offense, the holder is not sufficiently rehabilitated under section 12.1-33-02.1; or
5. The holder of such certificate has violated ~~any provisions~~ of this chapter.

SECTION 14. AMENDMENT. Section 43-03-21 of the North Dakota Century Code is amended and reenacted as follows:

43-03-21. Penalty. Any person willfully violating ~~the provisions of~~ this chapter is guilty of a class B misdemeanor.

SECTION 15. AMENDMENT. Section 43-03-22 of the North Dakota Century Code is amended and reenacted as follows:

43-03-22. Stamp. At the time of the issuance of the certificate of registration, the board shall furnish to the applicant, at the applicant's expense, a rubber stamp to be used by the applicant in the conduct of the applicant's practice and to be impressed upon drawings and other documents prepared by the applicant. The board shall prescribe rules governing the use of such stamp and ~~architect's~~ applicant's signature.

SECTION 16. AMENDMENT. Section 43-03-23 of the North Dakota Century Code is amended and reenacted as follows:

43-03-23. ~~Architect not liable~~ Liability for contractor's fault unless responsibility assumed - Liability for own negligence. An architect or a landscape architect is not liable for the safety of persons or property on or about a construction project site, or for the construction techniques, procedures, sequences and schedules; or for the conduct, action, errors, or omissions of any construction contractor, subcontractor, or material supplier, their agents or their employees, unless the architect or landscape architect assumes responsibility therefor by contract or by the architect's or landscape architect's actual conduct. ~~Nothing herein may be construed to~~ This section does not relieve an architect or a landscape

architect from liability from the architect's or landscape architect's negligence, whether in the architect's or landscape architect's design work or otherwise.

SECTION 17. Two new sections to chapter 43-03 of the North Dakota Century Code are created and enacted as follows:

Landscape architect and architect advisory committees. Before July 15, 2003, the board shall appoint a landscape architect advisory committee to assist in implementation and coordination of landscape architect regulation. The committee must consist of three landscape architects. Committee members serve on a voluntary basis and are not entitled to receive from the board compensation or reimbursement of expenses incurred in serving on the committee. Before July 15, 2003, the board shall appoint an architect advisory committee to assist in implementation and coordination of landscape architect regulation. The committee must consist of three architects. Committee members serve on a voluntary basis and are not entitled to receive from the board compensation or reimbursement of expenses incurred in serving on the committee.

Use of additional funds. The board may apply for, solicit, accept, and expend any contribution, grant, or gift made available from a public or private source for the purpose of regulating landscape architects.

Approved April 9, 2003

Filed April 9, 2003

CHAPTER 357

SENATE BILL NO. 2252

(Senators Cook, Freborg)
(Representatives Carlson, Wald)

CONTRACTOR LICENSING

AN ACT to amend and reenact sections 43-07-04, 43-07-14, 43-07-15, and 43-07-19 of the North Dakota Century Code, relating to contractor's license, license complaints, hearings, revocations, civil penalties, remedies, and service of process; to provide for a legislative council study; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-04 of the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of insurance indicating liability coverage, as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter and must specify the class of license sought. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:

1. Maintain liability insurance coverage required by this section or by section 43-07-10;
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
3. Maintain an active status of a corporation or registration as a foreign corporation;
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. File or renew a trade name registration as required by chapter 47-25;
6. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. File or renew a limited partnership or foreign limited partnership.

Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering into new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters into new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

SECTION 2. AMENDMENT. Section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license revocation. Any person, including an employee or agent of the registrar, may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

1. Abandonment of any contract without legal excuse. A rebuttable presumption of abandonment arises if:
 - a. A contractor fails to commence any work agreed upon in writing within sixty days of a starting date agreed upon in writing; or
 - b. A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.
2. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.
3. The doing of any fraudulent act by the licensee Engaging in any fraudulent or deceptive acts or practices or misrepresentation as a contractor in consequence of which ~~another~~ is one or more persons is injured in ~~an~~ a total amount exceeding the amount set forth in subsection 4 of section 27-08.1-04 three thousand dollars.
4. The making of any false statement in any application for a license of renewal thereof or by violating any provisions of this chapter or being convicted of an offense the registrar determines has a direct bearing on the applicant's or licensee's ability to serve the public as a contractor as set out in section 12.1-33-02.1.
5. Engaging in work without any trade or professional license as required for such work pursuant to local, state, or federal law.
6. Failure to fully refund the contracting party's advance payment if a rebuttable presumption of abandonment has arisen under subsection 1 and the contracting party has made a request to the licensee for a refund.

The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable person could conclude that one or more of the above acts or omissions has been committed.

SECTION 3. AMENDMENT. Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

43-07-15. Revocation or suspension of license - Restitution - Civil penalties - Appeal - Procedure. ~~Upon the filing of such complaint, the registrar shall follow the procedures prescribed by chapter 28-32. A written complaint filed under section 43-07-14, which provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, meets the requirements of subsection 4 of section 28-32-21. The registrar shall review each complaint filed under section 43-07-14. If the registrar determines a written complaint filed under section 43-07-14 provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, the registrar may initiate an adjudicative proceeding in accordance with chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under chapter 28-32, the registrar determines that the licensee has been is guilty of any of the acts an act or omissions omission charged or if the licensee admits guilt to an act or omission charged, the registrar shall may suspend or revoke the contractor's license, order a civil penalty of not more than one thousand dollars, order restitution in an amount not more than five thousand dollars, or impose some lesser sanction or remedy. The registrar may suspend the contractor's license for a period of not more than sixty months. The registrar may not renew, reinstate, or issue a new license until the licensee has paid any civil penalty or restitution imposed under this section. The registrar may bring an action in district court to recover restitution or penalties under this section. A contractor aggrieved by a decision of the registrar in revoking or suspending the contractor's license or ordering restitution or penalties may appeal the decision to the district court of that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of revocation or suspension. A "licensee" whose license is revoked or suspended includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.~~

SECTION 4. AMENDMENT. Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process. Every applicant for a contractor's license who is not a resident of the state of North Dakota ~~shall furnish to the secretary of state a written appointment by which the applicant, by signing and filing the application,~~ appoints the secretary of state as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing ~~shall be~~ is evidence of the contractor's consent that any such process against the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.1 and having a current registered agent and registered address on file in the secretary of state's office need not appoint the secretary of state as agent for service of process under this section. Within ten days after service of the summons upon the secretary of state, notice of such service with the summons and complaint in the action shall be sent to the defendant contractor at the defendant contractor's last-known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process

served upon the secretary of state under this section, showing the day and hour of service. Whenever service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

SECTION 5. CONTRACTOR COMPETENCY - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, consumer protection in regard to contractor competency and out-of-state contractors licensed in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 358

SENATE BILL NO. 2253 (Senator Kilzer)

FINGERPRINTING OF MEDICAL LICENSE APPLICANTS

AN ACT to amend and reenact subsection 4 of section 43-17-07.1 of the North Dakota Century Code, relating to the powers of the board of medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁵ **SECTION 1. AMENDMENT.** Subsection 4 of section 43-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board or to the commission on medical competency. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to file a complete set of the applicant's or licensee's fingerprints taken by a law enforcement officer or a properly trained designee of a law enforcement officer and all other information necessary to complete a statewide and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the licensee or applicant.

Approved April 11, 2003
Filed April 14, 2003

¹⁷⁵ Section 43-17-07.1 was also amended by section 32 of Senate Bill No. 2046, chapter 48.

CHAPTER 359

HOUSE BILL NO. 1436 (Representative Pollert) (Senator Klein)

PHYSICIAN LICENSURE

AN ACT to amend and reenact subsection 4 of section 43-17-18 of the North Dakota Century Code, relating to licensure of physicians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

4. Special license. The board may grant a temporary special license to an applicant who is a graduate of an international a medical school that is not located in the United States or Canada if that applicant has met all requirements for licensure except those pertaining to postgraduate training if the applicant; has successfully completed one year two years of approved postgraduate training in the United States or Canada; and is enrolled in a residency an approved postgraduate training program in this state. This special license is valid only for the purpose of practicing medicine within the scope of the residency training program while the licensee continues to be enrolled in an approved postgraduate training program in this state.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 360

HOUSE BILL NO. 1101

(Industry, Business and Labor Committee)
(At the request of the State Board of Cosmetology)

COSMETOLOGY LICENSING AND PRACTICE

AN ACT to amend and reenact subsections 2 and 13 of section 43-11-01, sections 43-11-04 and 43-11-06, subsection 3 of section 43-11-16, section 43-11-24, subsection 3 of section 43-11-27, and subsection 1 of section 43-11-28 of the North Dakota Century Code, relating to licensing of cosmetologists and cosmetology schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 13 of section 43-11-01 of the North Dakota Century Code are amended and reenacted as follows:

2. "Cosmetology" means any one or combination of practices generally and usually performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology includes the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, waxing to remove hair, beautifying, or similar work on the ~~scalp, face, neck, arms, hands, bust or upper part of the~~ body, or manicuring the nails of any person.
13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, waxing to remove hair, beautifying, or similar work on the ~~scalp, face, neck, arms, hands, bust, or upper part of the~~ body of any person. The term does not include invasive care.

SECTION 2. AMENDMENT. Section 43-11-04 of the North Dakota Century Code is amended and reenacted as follows:

43-11-04. Members of board - Qualifications. Each member of the board must be a citizen of this state and a licensed cosmetologist who has had at least three years practical experience in the occupation. ~~No two members of the board may be members of or affiliated with any school of cosmetology, nor may any two members of the board be graduates of the same school of cosmetology.~~

SECTION 3. AMENDMENT. Section 43-11-06 of the North Dakota Century Code is amended and reenacted as follows:

43-11-06. Compensation of members of board - How paid. Each member of the board is entitled to receive compensation of ~~forty~~ one hundred dollars for each day employed in the actual discharge of official duties, as determined by the board. The secretary of the board shall receive an annual salary of not more than thirteen thousand dollars to be fixed by the board, and necessary expenses actually incurred in the performance of official duties. Expenses incurred by a board member in the performance of an official function are payable by the board pursuant to sections 44-08-04 and 54-06-09. The compensation and expenses of all members of the board must be paid from the license fees and other sources of income of the board.

SECTION 4. AMENDMENT. Subsection 3 of section 43-11-16 of the North Dakota Century Code is amended and reenacted as follows:

3. Employs at least two full-time licensed instructors ~~for the first twenty-five students enrolled and one additional instructor for each additional twenty-five students enrolled or fraction thereof~~ and maintains a maximum student-to-instructor ratio of twenty-four-to-one based on current enrollment, except a school that provides training and instruction limited to esthetics or manicure shall ~~employ at least one full-time instructor for the first twelve students enrolled and one additional instructor for each additional twelve students enrolled or fraction thereof~~ maintain a maximum student-to-instructor ratio of twelve-to-one based on current enrollment;

SECTION 5. AMENDMENT. Section 43-11-24 of the North Dakota Century Code is amended and reenacted as follows:

43-11-24. Operator's license - When issued - Failure to pass examination - Reexamination - Retraining. An operator's license must be issued to any person who has:

1. Complied with section 43-11-21; and
2. Passed to the satisfaction of the board, the examination of applicants for a license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee may not be returned. ~~Within one year after failing~~ If an applicant fails to pass an examination, the applicant may be examined again with the payment of a reexamination fee as set forth in section 43-11-28. A person An applicant who fails to pass the first reexamination must complete an additional one hundred sixty hours of training at a school of cosmetology before ~~reapplying~~ applying for examination a second reexamination.

SECTION 6. AMENDMENT. Subsection 3 of section 43-11-27 of the North Dakota Century Code is amended and reenacted as follows:

3. No person is entitled to renew an instructor's license unless the instructor has furnished to the board evidence of ~~attendance at an approved seminar pursuant to requirements prescribed by the board~~ completion of the continuing education established by the board by rule.

SECTION 7. AMENDMENT. Subsection 1 of section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

1. Fees to be paid by applicants for original registrations, original licenses, annual renewals, licenses issued upon reciprocity, and examinations as required under this chapter may not exceed the following amounts:

| a. Original registrations, licenses, and annual renewals: | MAXIMUM FEE: |
|---|------------------------------------|
| (1) Salons, original registration | \$ 75.00 <u>80.00</u> |
| (2) Salons, annual renewal | \$ 25.00 <u>30.00</u> |
| (3) School of cosmetology, original registration | \$ 500.00 <u>505.00</u> |
| (4) School of cosmetology, annual renewal | \$ 200.00 <u>205.00</u> |
| (5) Operator, original license | \$ 40.00 <u>15.00</u> |
| (6) Operator, annual renewal | \$ 40.00 <u>15.00</u> |
| (7) Manager-operator, original license | \$ 20.00 <u>25.00</u> |
| (8) Manager-operator, annual renewal | \$ 45.00 <u>20.00</u> |
| (9) Instructor, original license | \$ 30.00 <u>35.00</u> |
| (10) Instructor, annual renewal | \$ 45.00 <u>20.00</u> |
| (11) Demonstrators, original license | \$ 25.00 <u>30.00</u> |
| (12) Demonstrators, annual renewal | \$ 45.00 <u>20.00</u> |
| (13) Reciprocity license fee | \$ 400.00 <u>105.00</u> |
| (14) Registration fee for student instructor | \$ 40.00 <u>15.00</u> |
| (15) Duplicate license | \$ 5.00 <u>10.00</u> |
| (16) Penalty fee for late renewal | \$ 40.00 <u>15.00</u> |
| (17) Certification fee | \$ 45.00 <u>20.00</u> |
| b. Examinations: | |
| (1) Operator | \$ 20.00 <u>25.00</u> |
| (2) Instructors | \$ 50.00 <u>55.00</u> |
| (3) Reexamination fee, operator's | |
| (a) Practical | \$ 25.00 <u>30.00</u> |
| (b) Written | \$ 45.00 <u>20.00</u> |
| (4) Reexamination fee, instructors <u>instructor's</u> | |
| (a) Practical | \$ 50.00 <u>55.00</u> |

(b) Written

\$ ~~20.00~~ 25.00

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 361

HOUSE BILL NO. 1245

(Representatives Keiser, Devlin, Porter)
(Senators Klein, Krebsbach, O'Connell)

NURSE EDUCATION AND LICENSURE

AN ACT to create and enact a new subsection to section 43-12.1-04 and four new sections to chapter 43-12.1 of the North Dakota Century Code, relating to nursing education, practice standards, licensure, and continuing education; to amend and reenact sections 43-12.1-01 and 43-12.1-02, subsection 2 of section 43-12.1-04, and sections 43-12.1-06, 43-12.1-08, 43-12.1-09, 43-12.1-10, 43-12.1-11, and 43-12.1-15 of the North Dakota Century Code, relating to education and licensure of nurses; to provide a penalty; to provide for application; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-01. Statement of policy Scope. ~~The legislative assembly finds that the practice of nursing is directly related to the public welfare of the citizens of the state of North Dakota and is subject to regulation and control in the public interest to assure that qualified, competent practitioners and high quality standards are available. The legislative assembly recognizes that the practice of nursing is continually evolving and responding to changes within health care patterns and systems and recognizes the existence of. There are overlapping functions within the practice of nursing and other providers of health care.~~

SECTION 2. AMENDMENT. Section 43-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Advanced practice registered nurse" means ~~a person~~ an individual who holds a current license to practice in this state as an advanced practice registered nurse ~~and either has a graduate degree with a nursing focus or has completed the educational requirements in effect when the person was initially licensed.~~
2. "Board" means the North Dakota board of nursing.
3. "Licensed practical nurse" means ~~a person~~ an individual who holds a current license to practice in this state as a licensed practical nurse ~~and either has an associate degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed.~~
4. "Nurse" means ~~any person~~ an individual who is currently licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse.

5. "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. ~~Nursing~~ The term includes the following acts, which may not be deemed to include acts of medical diagnosis or treatment or the practice of medicine as defined in chapter 43-17:
 - a. The maintenance of health and prevention of illness.
 - b. Diagnosing human responses to actual or potential health problems.
 - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding and referral of ~~persons~~ individuals who are ill, injured, or experiencing changes in the normal health processes.
 - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
 - e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of the health care regimen prescribed by a health care practitioner licensed under ~~title 43~~ the laws of this state.
6. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.
7. "Registered nurse" means a ~~person~~ an individual who holds a current license to practice in this state as a registered nurse ~~and either has a baccalaureate degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed~~.
8. "Specialty practice registered nurse" means a ~~person~~ an individual who holds a current license to practice in this state as a specialty practice registered nurse ~~and has the educational preparation and national certification within a defined area of nursing practice~~.
9. "~~Transitional practical nurse license~~" means a license issued by the board to a ~~person who meets all of the requirements for licensure by endorsement as a licensed practical nurse, except the educational requirements~~.
40. "~~Transitional registered nurse license~~" means a license issued by the board to a ~~person who meets all of the requirements for licensure by endorsement as a registered nurse, except the educational requirements~~.
44. "Unlicensed assistive person" means an assistant to the nurse who regardless of title is authorized by the board to perform nursing interventions delegated and supervised by a ~~licensed~~ nurse.

¹⁷⁶ **SECTION 3. AMENDMENT.** Subsection 2 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Students practicing nursing as a part of a ~~board-approved~~ an in-state nursing education program.

¹⁷⁷ **SECTION 4.** A new subsection to section 43-12.1-04 of the North Dakota Century Code is created and enacted as follows:

Upon written notification to the board by an out-of-state nursing program, a student practicing nursing as a part of a nursing education program preparing for initial or advanced licensure as a registered nurse or licensed practical nurse which is approved by a board of nursing and is located in an institution of higher education that offers transferable credit.

SECTION 5. AMENDMENT. Section 43-12.1-06 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-06. Qualifications of board members.

1. Each registered nurse must be an eligible voting resident of this state, possess an unencumbered registered nurse license under this chapter, and be currently engaged in practice as a registered nurse. A majority of the members under this subsection must be actively engaged in practice in a nurse-patient setting.
2. Each licensed practical nurse must be an eligible voting resident of this state, possess an unencumbered practical nurse license under this chapter, and be currently engaged in practice as a licensed practical nurse. A majority of the members under this subsection must be actively engaged in practice in a nurse-patient setting.
3. Each public member must be an eligible voting resident of this state and have no employment, professional license, or financial interest with any health care entity.
4. Each member appointed to the board shall maintain the qualifications for appointment for the duration of the appointment. The governor may remove any member of the board for cause upon recommendation of two-thirds of the members of the board.

SECTION 6. AMENDMENT. Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

¹⁷⁶ Section 43-12.1-04 was also amended by section 1 of House Bill No. 1201, chapter 362, and section 4 of House Bill No. 1245, chapter 361.

¹⁷⁷ Section 43-12.1-04 was also amended by section 1 of House Bill No. 1201, chapter 362, and section 3 of House Bill No. 1245, chapter 361.

43-12.1-08. Powers and duties Duties of the board.

1. The board shall regulate the practice of nursing ~~to assure that qualified competent practitioners and high quality standards are available.~~ Regulation of the ~~profession~~ practice of nursing must ensure that ~~no~~ a person may not practice or offer to practice nursing or use titles of advanced practice registered nurse, specialty practice registered nurse, registered nurse, licensed practical nurse, or unlicensed assistive person, or titles of a similar nature which denote the practice of nursing to the general public unless licensed or registered as provided in this chapter.
2. The board shall:
 4. a. ~~Enforce the provisions of this chapter. The board has all of the duties, powers, and authority specifically granted by and necessary for the enforcement of this chapter.~~
 2. b. Adopt rules necessary to administer this chapter after collaborating and consulting with North Dakota nursing associations and other affected parties.
 3. c. ~~Appoint and employ a qualified registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.~~
 4. d. ~~Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.~~
5. ~~Establish qualifications for nursing licensure and registration.~~
6. ~~Establish standards for nursing education and practice and:~~
 - a. ~~Collaborate and consult with the appropriate nursing organizations and other affected parties in the establishment of the standards; and~~
 - b. ~~Consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses. Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse and include evidence of a collaborative agreement with a licensed physician.~~
7. ~~Periodically review and approve nursing education programs.~~
8. ~~License and register applicants and renew and reinstate licenses and registrations.~~
9. ~~Establish standards for assessing the competence of licensees and registrants continuing in or returning to practice.~~
10. e. ~~Collect and analyze data regarding nursing education, nursing practice, and nursing resources.~~

- 44. f. Issue and renew limited licenses to individuals requiring accommodation to practice nursing.
- 42. g. Establish confidential programs for the rehabilitation of nurses with workplace impairments.
- 43. ~~Discipline applicants, licensees, and registrants for violating this chapter.~~
- 44. h. Establish a nursing student loan program funded by license fees to encourage ~~persons~~ individuals to enter and advance in the nursing profession.
- 45. i. Establish a registry of ~~persons~~ individuals licensed or registered by the board.
- 46. ~~Collaborate and consult with the North Dakota nurses association, North Dakota licensed practical nurses association, and other nursing specialty groups prior to the adoption of rules.~~
- 47. j. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
- 48. k. Conduct and support projects pertaining to nursing education and practice.
- 49. l. Notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of advanced practice registered nurses authorized to write prescriptions.
- 20. m. Adopt rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.

SECTION 7. Two new sections to chapter 43-12.1 of the North Dakota Century Code are created and enacted as follows:

Nursing education programs.

1. The board shall adopt rules establishing standards for in-state nursing education programs leading to initial or advanced licensure. A nursing education program may not be provided in this state unless the board has approved the program. The board shall approve, review, and reapprove nursing education programs in this state. The board may not require a statement of intent as part of the approval process under this section.
2. The standards established under this section for a program leading to licensure as a licensed practical nurse:
 - a. Must allow for a program that offers two or more academic years of course study or the equivalent;
 - b. Must allow for a program that offers less than two academic years of course study or the equivalent; and

- c. May not allow for a program that offers less than one academic year of course study or the equivalent.
- 3. The standards established under this section for a program leading to licensure as a registered nurse:
 - a. Must allow for a program that offers four or more academic years of course study or the equivalent;
 - b. Must allow for a program that offers less than four academic years of course study or the equivalent; and
 - c. May not allow for a program that offers less than two academic years of course study or the equivalent.

Nursing practice standards. The board shall adopt rules establishing standards for nursing practice. The board shall consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses. Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse and include evidence of a collaborative agreement with a licensed physician.

SECTION 8. AMENDMENT. Section 43-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09. ~~Licensure - Registration~~ Initial licensure and registration.

- 1. The board shall license and register nursing applicants. The board shall adopt rules establishing qualifications for initial nursing licensure and registration.
- 2. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:
 - 4- a. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
 - a- (1) Submit a completed application and appropriate fee as established by the board;
 - b- (2) Submit an official transcript showing completion of an in-state nursing education program or a board-approved out-of-state nursing education program preparing for the level of licensure sought; and. The board shall adopt rules establishing standards for the approval of out-of-state nursing education programs. These standards for out-of-state programs must include consideration of whether the program is accredited by the national league for nursing accrediting commission, incorporated, or the commission on collegiate nursing education and whether the program meets the requirements of the state in which the program is provided.
 - e- (3) Pass an examination approved by the board.

2.
 - b. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:
 - a. (1) Submit a completed application and appropriate fee as established by the board;
 - b. (2) Submit an official transcript showing completion of a nursing education program ~~equal to or exceeding the requirements for nursing education programs in place in this state at the time the applicant qualified for initial licensure;~~ preparing for the level of licensure sought.
 - c. (3) Submit proof of initial licensure by examination with the examination meeting ~~the state~~ North Dakota requirements for licensure examinations in effect at the time the applicant qualified for initial licensure; ~~and.~~
 - d. (4) Submit evidence of current unencumbered licensure in another state ~~or territory~~ or meet continued competency requirements as established by the board.
3. ~~If an applicant for licensure by endorsement does not meet the educational requirements for the appropriate level of licensure as established by the board, a transitional license may be issued. A transitional license may be issued and renewed according to board rules. Renewal requires proof of progression towards meeting the academic requirements or thirty hours of continuing education.~~
4.
 - c. An applicant for licensure as an advanced practice registered nurse shall:
 - a. (1) Submit a completed application and appropriate fee as established by the board;
 - b. (2) Submit evidence of appropriate education and current certification in an advanced nursing role by a national nursing organization meeting criteria as established by the board; ~~and.~~ An advanced practice registered nurse applicant must have a graduate degree with a nursing focus or must have completed the educational requirements in effect when the applicant was initially licensed.
 - c. (3) Possess or show evidence of application for a current unencumbered registered nurse license.
5.
 - d. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state before January 1, 2001, or who completed an advanced nursing education program and was licensed or certified as a women's health care nurse practitioner by another state before January 1, 2007, may apply for and receive an advanced practice license if that ~~person~~ applicant meets the requirements that were in place in this state at the time the applicant qualified for initial advanced practice licensure in that state.

6. e. An applicant for unlicensed assistive person registration shall:
- a. (1) Submit a completed application and the appropriate fee as established by the board; ~~and~~.
 - b. (2) Provide verification of appropriate training; or evidence of certification or evaluation in the performance of basic nursing interventions.
7. f. An applicant for licensure as a specialty practice registered nurse shall:
- a. (1) Submit a completed application and appropriate ~~fees~~ fee as established by the board;.
 - b. (2) Submit evidence of appropriate education and current certification in a specialty nursing role by a national nursing organization meeting criteria as established by the board; ~~and~~. A specialty practice registered nurse applicant must have the educational preparation and national certification within a defined area of nursing practice.
 - e. (3) Possess or show evidence of application for a current unencumbered registered nurse license.

SECTION 9. AMENDMENT. Section 43-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-10. License - Registration - Renewal of license or registration - Reactivation.

1. ~~A~~ The board shall renew a current license to practice as an advanced practice registered nurse, specialty practice registered nurse, registered nurse, or licensed practical nurse must be issued upon proof that if the applicant licensee submits a renewal application, submits the appropriate fee established by the board, and meets all requirements for licensure. If a person licensee does not renew a license before its expiration date the license expires, the board shall reactivate that license may be reinstated if that person licensee meets the reactivation requirements set by the board.
2. ~~An~~ The board shall renew the registration of an unlicensed assistive person may renew registration upon submission of if the registrant submits a renewal application, the appropriate fee established by the board, and documentation of competency by the employer or evidence of certification or evaluation. A lapsed unlicensed assistive person registration may be renewed reactivated upon submission of the application, payment of the appropriate fee established by the board, and documentation of competency or evidence of certification or evaluation.

SECTION 10. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

(Effective through September 30, 2003) Transition from transitional nurse licenses. Before October 1, 2003, the board shall issue a licensed practical

nurse license or a registered nurse license to each individual who holds a license as a transitional practical nurse or a transitional registered nurse on August 1, 2003. A newly issued license under this section replaces the transitional license.

SECTION 11. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements. The board shall adopt rules requiring every nurse licensed under this chapter to fulfill continuing education requirements. Before the board may renew or reactivate a license, the licensee shall submit evidence to the board establishing that the required continuing education requirements have been met.

SECTION 12. AMENDMENT. Section 43-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-11. Duties of licensees and registrants. Each ~~person~~ individual licensed or registered by the board shall provide information requested by the board at the time of renewal or reactivation. Each ~~person~~ individual licensed or registered by the board shall report to the board any knowledge of the performance by others of those acts or omissions that are violations of this chapter or grounds for disciplinary action as set forth in section 43-12.1-14. Each licensee or registrant shall report to the board any judgment or settlement in a professional or occupational malpractice action to which the licensee or registrant is a party. Any person, other than a licensee or registrant alleged to have violated this chapter, participating in good faith in making a report, assisting in an investigation, or furnishing information to an investigator, is immune from any civil or criminal liability that otherwise may result from reporting required by this section. For the purpose of any civil or criminal proceeding the good faith of any person required to report under this section is presumed.

SECTION 13. AMENDMENT. Section 43-12.1-15 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-15. Violation - Penalties. ~~A person may not~~ It is a class B misdemeanor for a person to willfully:

1. Buy or sell, fraudulently obtain, or furnish any questions and answers used in the licensing examination for nurses, or assist others in the performance of these acts.
2. Buy or sell, fraudulently obtain, or furnish any record ~~which~~ that might enable ~~a person~~ an individual to obtain a license in this state or assist others in the performance of these acts.
3. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, ~~or~~ a licensed practical nurse, or an unlicensed assistive person through use of a transcript from a school of nursing, diploma, certificate of registration, license, or record ~~which~~ that was fraudulently created or obtained.
4. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, ~~or~~ a licensed practical nurse, or an unlicensed assistive person as defined by this chapter unless licensed to do so.

5. Conduct any education program preparing a ~~person~~ an individual for nursing licensure or registration unless the program has been approved ~~or accepted~~ by the board.
6. Employ a person to practice nursing or perform nursing interventions unless the person is licensed or registered by the board.

~~Any violation of this chapter is a class B misdemeanor.~~

SECTION 14. APPLICATION. Section 5 of this Act applies to any vacancy filled after July 31, 2003. The license renewal and reactivation requirements of section 11 of this Act are effective beginning with the 2005 licensure year.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 362**HOUSE BILL NO. 1201**
(Representatives Devlin, Nelson, Weisz)
(Senators Fischer, Grindberg, Klein)**NURSE PRACTICES ACT EXCLUSIONS**

AN ACT to create and enact a new subsection to section 43-12.1-04 of the North Dakota Century Code, relating to persons excluded from the Nurse Practices Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁸ **SECTION 1.** A new subsection to section 43-12.1-04 of the North Dakota Century Code is created and enacted as follows:

An individual, including a feeding assistant, performing nonhands-on tasks while employed in a medicare-funded organization.

Approved March 7, 2003
Filed March 7, 2003

¹⁷⁸ Section 43-12.1-04 was also amended by section 4 of House Bill No. 1245, chapter 361, and section 3 of House Bill No. 1245, chapter 361.

CHAPTER 363

HOUSE BILL NO. 1256

(Representatives M. Klein, N. Johnson, Kasper)
(Senator Espegard)

ENGINEER REGISTRATION AND EDUCATION

AN ACT to create and enact a new subsection to section 43-19.1-02, a new subsection to section 43-19.1-14, a new subsection to section 43-19.1-15, and a new section to chapter 43-19.1 of the North Dakota Century Code, relating to definitions, registration of professional engineers, qualifications of engineers in training, and continuing professional education; and to amend and reenact subsections 2 and 3 of section 43-19.1-14 of the North Dakota Century Code, relating to registration of professional engineers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-19.1-02 of the North Dakota Century Code is created and enacted as follows:

"Retired registrant" means a duly registered professional engineer or land surveyor who is not engaged in active professional practice and is not required to meet the continuing professional education requirements as prescribed by the board. A retired registrant is issued a certificate of registration indicating "retired" status.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 43-19.1-14 of the North Dakota Century Code are amended and reenacted as follows:

2. Is a person who has satisfactorily completed a four-year engineering ~~or related~~ curriculum not approved by the board, and eight years or more of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering, and who ~~passes a written examination of not less than eight hours in the fundamentals of engineering designed to show knowledge and skill approximating that obtained through graduation in an approved four-year engineering or related curriculum~~ holds a valid engineer-in-training certificate.
3. Is a person with a specific record of at least twenty years of lawful practice in engineering work during at least ten years of which the applicant has been in responsible charge of important engineering work which is of a grade and character which indicates to the board that the applicant is competent to practice engineering, and who holds a valid engineer-in-training certificate as of July 1, 2004.

SECTION 3. A new subsection to section 43-19.1-14 of the North Dakota Century Code is created and enacted as follows:

Is a person who has satisfactorily completed a four-year or more engineering-related curriculum and twelve years or more of progressive experience in engineering work of a character and grade which

indicates to the board that the applicant is competent to practice engineering and holds a valid engineer-in-training certificate.

SECTION 4. A new subsection to section 43-19.1-15 of the North Dakota Century Code is created and enacted as follows:

An applicant who has satisfactorily completed a four-year engineering-related curriculum and who has a specific record of six or more years of experience in engineering work of a grade and character satisfactory to the board and who passes the board's written examination of not less than eight hours in the fundamentals of engineering.

SECTION 5. A new section to chapter 43-19.1 of the North Dakota Century Code is created and enacted as follows:

Continuing professional education - Rules. The board shall adopt rules to establish continuing education requirements for professional engineers and land surveyors. Compliance with these rules must be documented at the times, and in the manner, as is required by the board. A professional engineer or land surveyor who is exempt under subsection 5 of section 43-19.1-29 but who has voluntarily registered under this chapter is exempt from the continuing professional education requirements under this section.

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 364

HOUSE BILL NO. 1236

(Representatives N. Johnson, Kasper, M. Klein)
(Senator Espegard)

ENGINEER AND SURVEYOR FEES AND DISCIPLINARY ACTIONS

AN ACT to amend and reenact sections 43-19.1-18 and 43-19.1-25 of the North Dakota Century Code, relating to professional engineer and land surveyor registration fees and recovery of legal costs in disciplinary matters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-18. Registration fees. The board shall establish registration fees for professional engineers, engineers-in-training, land surveyors, and land surveyors-in-training in the amount the board determines necessary to accomplish the purposes of the board as provided in this chapter. The registration fees may not exceed the amount of ~~fifty~~ one hundred dollars for a one-year period or ~~one~~ two hundred dollars for a two-year period. If the board denies the issuance of a certificate to an applicant, the fee paid may be retained as an application fee.

SECTION 2. AMENDMENT. Section 43-19.1-25 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-25. Disciplinary action - Revocations, suspensions, or reprimand. The board has the power to suspend, refuse to renew, or revoke the certificate of registration of, or reprimand, any registrant; In an order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a registrant, the board may direct a registrant to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels in the investigation and prosecution of the case. Notwithstanding section 28-32-50, if a registrant is the prevailing party in an administrative appeal of a disciplinary action taken by the board under this section, the board shall pay the registrant's reasonable and actual costs, including reasonable attorney's fees. These powers apply to any registrant who is found guilty of any of the following:

1. The practice of any fraud or deceit in obtaining a certificate of registration.
2. Any gross negligence, incompetence, or misconduct in the practice of engineering or land surveying.
3. Any offense determined by the board to have a direct bearing upon a person's ability to serve the public as a professional engineer and land surveyor; or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.

4. The violation of the code of ethics adopted and promulgated by the board.

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 365**SENATE BILL NO. 2217**

(Senators Andrist, Erbele, Krauter, Nichols)

DENTAL HYGIENIST ANESTHESIA ADMINISTRATION

AN ACT to create and enact a new section to chapter 43-20 of the North Dakota Century Code, relating to the administration of anesthesia by dental hygienists under dental supervision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Supervised administration of anesthesia - Board rules. A licensed dentist may delegate to a dental hygienist licensed by the board the administration of block and infiltration anesthesia to a patient who is at least eighteen years old. The dental hygienist must be under the direct supervision of a dentist and the dental hygienist must complete the educational requirements as required by the commission on dental accreditation and approved by the board. The board shall adopt rules to implement this section.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 366

SENATE BILL NO. 2145

(Senators J. Lee, Lyson)
(Representatives Weiler, Potter, Wieland, Carlson)
(At the request of the Real Estate Commission)

REAL ESTATE BROKER AND SALESPERSON FINES

AN ACT to amend and reenact subsections 1, 3, and 4 of section 43-23-11.1 of the North Dakota Century Code, relating to real estate broker and real estate salesperson fines and recovery of investigation and legal fees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 3, and 4 of section 43-23-11.1 of the North Dakota Century Code are amended and reenacted as follows:

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and has the power to suspend or revoke a license, impose a monetary fine and actual costs incurred by the commission in the investigation and prosecution of the complaint, require course attendance, or issue a letter of reprimand, or any combination thereof, when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
 - a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission.
 - b. Making any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.
 - c. Making any false promise of a character such as to influence, persuade, or induce a party to a real estate transaction to that person's injury or damage.
 - d. Acting for more than one party in a transaction without the knowledge and consent of all parties to that transaction for whom the licensee acts.
 - e. Failure to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession belonging to others; commingling funds of others with the licensee's own, failing to keep such funds of others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposit, which must contain such information as may be prescribed by the rules and regulations of the commission relative thereto.

- f. Been convicted or pleaded guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other similar offense. A certified copy of the record of conviction is conclusive evidence of conviction in such cases.
- g. Claiming or taking of any secret or undisclosed amount of compensation or commission or the failure of a licensee to reveal to the licensee's principal or employer the full amount of such licensee's compensation or commission in connection with any acts for which a license is required under this chapter.
- h. Failing or refusing upon demand to produce any document, book, or record in the licensee's possession or under that person's control, concerning any real estate transaction under investigation by the commission.
- i. Offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on any terms other than those authorized by the owner or agent.
- j. Refusing, because of race, color, national origin, or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
- k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto.
- l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person who is not licensed as a real estate broker or real estate salesperson under this chapter.
- m. Failing to disclose to an owner the licensee's intention or true position if the licensee directly or indirectly through a third party purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease.
- n. Failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal.
- o. Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed, and to retain true copies of such statements in the broker's files.
- p. Violating any provisions of this chapter or rule or regulation promulgated by the commission.

- q. Violation of any provision of such realtor's code of ethics as the commission has or may promulgate and adopt.
 - r. Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom the individual is licensed as a salesperson.
 - s. If the licensee is a broker, allowing any unlicensed salesperson to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission, which is carried on in the name of or under the authority of the broker.
 - t. Failure of a salesperson to place with that person's employing broker for deposit in the brokerage trust account all real estate trust moneys received by the salesperson within twenty-four hours of the time of receipt; or failure of the employing broker to place such moneys for deposit within twenty-four hours of the time of receipt from the salesperson. Provided that if trust money is received on a day prior to a holiday or on another day prior to which the depository is closed where the trust fund is maintained, the moneys must then be deposited during the next business day of the depository.
 - u. Failure of the licensee to reduce an offer to writing where a proposed purchaser requests that such offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance.
 - v. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of that person's licensed privilege.
 - w. Any conduct which in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.
3. ~~No~~ A license may not be revoked or suspended, ~~no~~ a monetary fine or actual costs may not be imposed, course attendance may not be required, nor any letter of reprimand issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand. The provisions of chapter 28-32 apply to and govern all proceedings for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand of licenses or licensees.

4. Any monetary fine imposed may not exceed the sum of one thousand dollars. In any order or decision issued by the commission in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the commission may direct the licensee to pay a fine not to exceed two thousand five hundred dollars and actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case. All fines collected must be deposited in the commission's license fee account.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 367

SENATE BILL NO. 2146

(Senators J. Lee, Lyson)

(Representatives Weiler, Potter)

(At the request of the Real Estate Commission)

REAL ESTATE BROKER LICENSES AND FEES

AN ACT to amend and reenact sections 43-23-13 and 43-23-13.1 of the North Dakota Century Code, relating to real estate broker and real estate salesperson license and renewal fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-13 of the North Dakota Century Code is amended and reenacted as follows:

43-23-13. Fees. Fees for real estate brokers and real estate salespersons are as follows:

1. A fee of ~~sixty~~ not more than two hundred dollars, as set by the commission, must accompany an application for an individual's real estate broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, limited liability company, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of ~~sixty~~ not more than two hundred dollars, as set by the commission.
3. For an individual's real estate salesperson's license and for each annual renewal of the license, a fee of ~~fifty~~ not more than two hundred dollars, as set by the commission.
4. ~~For each additional office or place of business, an annual fee of ten dollars~~ The commission shall set and collect reasonable fees to help offset the cost of operating the commission.
5. ~~For each change of office or place of business, a fee of ten dollars.~~
6. ~~For each transfer of a real estate salesperson's license, a fee of ten dollars.~~
7. ~~For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.~~
8. ~~For each examination given to an applicant, before a license is issued, a fee in an amount equal to the actual costs of the examination and its administration.~~
9. ~~For each change of name, a fee of ten dollars.~~

SECTION 2. AMENDMENT. Section 43-23-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-13.1. License renewal. Every person licensed to practice as a real estate broker or real estate salesperson must register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal must be accompanied by such certification as required by this chapter and rules of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and is to be submitted to the commission with the appropriate fee no later than December thirty-first of each year. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee may file a late renewal application, together with the required educational certification, before March first of the subsequent year and shall pay, in addition to the renewal fee, ~~the sum of ten dollars~~ a late fee as set by the commission for each month or fraction thereof after January first. Any license not renewed by March first must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and who desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

No licensee may engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 368

HOUSE BILL NO. 1136

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Appraiser
Qualifications and Ethics Board)

REAL ESTATE APPRAISER LICENSING

AN ACT to amend and reenact subsection 1 of section 43-23.3-03, subsection 1 of section 43-23.3-08, sections 43-23.3-10, 43-23.3-12, and 43-23.3-19, and subsection 1 of section 43-23.3-22 of the North Dakota Century Code, relating to licensing of real estate appraisers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The board, or its designated representative, shall:
 - a. Define apprentice appraiser, licensed appraiser, and certified appraiser, determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter, and establish application procedures.
 - b. Establish examination specifications for each category of licensed and certified appraiser and administer examinations.
 - c. Approve or disapprove applications for licensure and certification, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals licensed and certified.
 - d. Discipline permittees.
 - e. Hold meetings, hearings, and examinations in places and at times as it designates and maintain records of board activities.
 - f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.

SECTION 2. AMENDMENT. Subsection 1 of section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for a permit as an apprentice appraiser must have a high school education or its equivalent and must successfully complete ~~fifteen classroom hours related to the standards of professional practice and this chapter~~ the education requirements established by the board.

SECTION 3. AMENDMENT. Section 43-23.3-10 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-10. Term of permit. ~~The term of a permit is one year from the date of issuance.~~ Permits expire on December thirty-first of each year. The expiration

date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

SECTION 4. AMENDMENT. Section 43-23.3-12 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-12. Permit renewal. To renew a permit ~~to practice as a licensed or a certified appraiser~~, the permittee shall apply to the board and pay the required fee. With the application for renewal, the appraiser shall present evidence of having completed the continuing education requirements for renewal. ~~A person who has temporarily surrendered a permit may not act as an appraiser, but may reactivate a permit without an examination. That person is~~ The board may adopt rules to allow permits to be assigned to inactive status. Permits assigned to inactive status are subject to disciplinary action and activation of an inactive permit may be subject to a denial by the board.

SECTION 5. AMENDMENT. Section 43-23.3-19 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-19. Continuing education. ~~Beginning July 1, 1992, and every three years thereafter, each~~ Each applicant for renewal of a permit shall submit proof of participation in the minimum number of continuing education hours required and approved by the board. The board shall adopt rules for the implementation of continuing education requirements to assure that permit renewal applicants have current knowledge of appraisal theories, practices, and techniques that provide a high degree of service and protection to the public. The rules must establish:

1. Policies and procedures for obtaining board approval of courses of instruction.
2. Standards, policies, and procedures to be applied by the board in evaluating an applicant's claims of equivalency.
3. Standards, monitoring methods, and systems for recording attendance by course sponsors.

SECTION 6. AMENDMENT. Subsection 1 of section 43-23.3-22 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~The board may, and upon the verified complaint in writing of any person shall, investigate the activities of any person and may deny an application for, refuse to renew, suspend, or revoke a permit, impose a monetary fine, or issue a letter of reprimand, when the person applicant or permittee has:~~
 - a. Procured or attempted to procure a permit by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or through fraud or misrepresentation.
 - b. Failed to meet the minimum qualifications established under this chapter.
 - c. Paid money other than provided for by this chapter to any member or employee of the board to procure a permit.

- d. Been convicted, including a conviction based upon a plea of guilty or nolo contendere, of a felony or of a crime that is substantially related to the qualifications, functions, and duties of a person developing and communicating appraisals to others.
- e. Performed an act involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially that person or another person, or with the intent to injure substantially another person.
- f. Violated any standard for the development or communication of appraisals as provided in this chapter.
- g. Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.
- h. Acted with gross negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.
- i. Willfully violated this chapter or rules of the board.
- j. Accepted an appraisal assignment when the employment is contingent upon the reporting of a predetermined estimate, analysis, or opinion, or where the fee is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.
- k. Violated the confidential nature of governmental records to which the person gained access through employment or engagement as an appraiser by a governmental agency.
- l. Had entry of a civil judgment against the person on grounds of fraud, misrepresentation, or deceit in the making of an appraisal.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 369

SENATE BILL NO. 2365

(Senators Erbele, Mathern)

(Representatives Kretschmar, Maragos)

MASSAGE THERAPIST CONTINUING EDUCATION

AN ACT to amend and reenact subsection 2 of section 43-25-09 of the North Dakota Century Code, relating to massage therapist continuing education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

2. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than six units of a licensee's annual continuing education requirements may be by remote education. To qualify as continuing education, the remote education must be sponsored by a nationally recognized provider and must be board-approved for content and suitability.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 370

SENATE BILL NO. 2378

(Senators Nething, Andrist, Lyson)

(Representative Hawken)

DENTIST LOAN REPAYMENT PROGRAM

AN ACT to amend and reenact subsection 3 of section 43-28.1-03 and subsection 1 of section 43-28.1-04 of the North Dakota Century Code, relating to selection criteria and eligibility for loan repayment for dentists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~One out of every three dentists~~ Dentists selected annually shall contract to provide full-time dental services for a minimum of four years in one or more selected communities ~~having fewer than two thousand five hundred residents. One out of every three dentists selected annually shall contract to provide full-time dental services for a minimum of four years in one or more selected communities having fewer than ten thousand residents. One out of every three dentists selected annually shall contract to provide full-time dental services for a minimum of four years in one or more selected communities having ten thousand or more residents.~~

SECTION 2. AMENDMENT. Subsection 1 of section 43-28.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The state health council shall apply the following criteria in selecting a community with a defined need for the services of a dentist:
 - a. The size of the community, with rural communities with a population under twenty-five hundred given highest priority, communities with a population between twenty-five hundred and ten thousand given the next highest priority, and communities with a population greater than ten thousand given the lowest priority. In cities with a population greater than ten thousand, first priority must be given to dentists who commit to satellite to underserved areas and then to dental specialists in cities with an identified need for a specialist.
 - b. The number of dentists practicing in the community and the surrounding area.
 - c. The access by residents to dentists practicing in the community and the surrounding area.
 - d. The mix of dental specialties in the community and surrounding area.

- e. The degree to which residents support the addition of a dentist within the community.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 371

SENATE BILL NO. 2139

(Agriculture Committee)

(At the request of the Board of Veterinary Medical Examiners)

VETERINARY MEDICINE TEMPORARY PERMITS

AN ACT to amend and reenact subsection 3 of section 43-29-07.2 of the North Dakota Century Code, relating to temporary permits to practice veterinary medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-29-07.2 of the North Dakota Century Code is amended and reenacted as follows:

3. The board may issue without examination a temporary permit to practice veterinary medicine in this state to:
 - a. A qualified applicant for license pending examination, if the temporary permit expires the day after the notice of results of the first examination given after the permit is issued. A temporary permit may not be issued to an applicant who previously has failed the examination in this or any other state or a foreign country.
 - b. A nonresident veterinarian validly licensed in another state or a foreign country who pays the fee established and published by the board if the temporary permit is issued for a period of no more than sixty days and no more than one permit is issued to a person during each calendar year.
 - c. A senior veterinary student who practices in the office of and under the direct supervision of a licensed veterinarian. A temporary student permit may not exceed six months from its date of issuance and is granted without payment of a fee.
 - d. A graduate of a nonaccredited or unapproved college of veterinary medicine, who has satisfactorily completed the fourth year of clinical study at an accredited or approved college of veterinary medicine, has successfully passed the examination provided by the national board of veterinary medical examiners, and is enrolled in the educational commission for foreign veterinary graduates program. The holder of a temporary permit issued under this subdivision must practice under the supervision of a licensed veterinarian. A temporary permit issued under this subdivision is valid until the holder obtains a certificate or for two years.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 372

HOUSE BILL NO. 1279 (Representatives Wrangham, Carlisle) (Senator Klein)

HEARING AID SPECIALISTS

AN ACT to create and enact a new subsection to section 43-33-14 of the North Dakota Century Code, relating to duties of the board of hearing aid specialists; and to amend and reenact section 43-33-01, subsection 2 of section 43-33-02, section 43-33-02.1, subsection 2 of section 43-33-03, section 43-33-04, subsection 2 of section 43-33-08, sections 43-33-10 and 43-33-11, subsection 2 of section 43-33-12, section 43-33-15, subsection 2 of section 43-37-03, and subdivision m of subsection 1 of section 43-46-01 of the North Dakota Century Code, relating to hearing aid specialists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-33-01 of the North Dakota Century Code is amended and reenacted as follows:

43-33-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Board" means the board of hearing ~~instrument dispensers~~ aid specialists.
2. "Hearing aid" or "hearing instrument" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories including earmold, but excluding batteries, cords, and earmold tubing.
3. "License" means a license issued under this chapter to a hearing instrument dispensers aid specialist.
4. "Licensee" means a hearing aid specialist licensed under this chapter.
5. "Practice of fitting and dispensing hearing instruments" means the measurement of human hearing to determine hearing loss by means of an audiometer or by any means solely for the purpose of making selections, adaptations, repairs, or sale of hearing instruments. The term also includes the making of impressions for earmolds. A dispenser licensee, at the request of a physician or member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.
- 5- 6. "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. This excludes wholesale to distributors or dispensers.
- 6- 7. "Trainee permit" means a temporary permit issued while an applicant is in training to become a ~~licensed hearing instrument dispenser~~ licensee.

SECTION 2. AMENDMENT. Subsection 2 of section 43-33-02 of the North Dakota Century Code is amended and reenacted as follows:

2. This chapter does not prohibit a person maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if that person employs only properly licensed individuals in the direct sale and fitting of such products. Such persons shall file annually with the board a list of all ~~licensed hearing instrument dispensers~~ licensees directly or indirectly employed by it. Those persons shall also file with the board a statement on a form approved by the board that they submit themselves to the rules of the board and the provisions of this chapter.

SECTION 3. AMENDMENT. Section 43-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-33-02.1. Conviction not bar to licensure - Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a hearing ~~instrument dispenser~~ aid specialist, or determines that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Subsection 2 of section 43-33-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The receipt must bear in no smaller type than the largest used in the body copy portion the following: Any examination or representation made by a licensed hearing ~~instrument dispenser~~ aid specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice.

SECTION 5. AMENDMENT. Section 43-33-04 of the North Dakota Century Code is amended and reenacted as follows:

43-33-04. Persons and practices not affected. This chapter does not prevent or restrict:

1. A person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if the person or organization employing that person does not sell hearing instruments.
2. A person employed as a hearing ~~instrument dispenser~~ aid specialist by the federal government from engaging in the practice of fitting and dispensing hearing instruments if the person performs the practice solely within the confines or under the jurisdiction of the government of the United States.
3. Activities and services of a person pursuing a course of study leading to a graduate degree in audiology at a college or university if the activities or services are under the direct supervision of a ~~licensed dispenser~~ licensee, constitute a part of a supervised course of study, and the person is designated an audiology intern or trainee or by another title clearly indicating the training status appropriate to the level of training.

SECTION 6. AMENDMENT. Subsection 2 of section 43-33-08 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receiving an application accompanied by a fee as established by the board, the board shall issue a trainee permit that permits the applicant to engage in the training of fitting and sale of hearing instruments for a period of one year under the direct supervision of a ~~person holding a valid hearing instrument dispenser license~~ licensee. The trainee shall train in the same place of business as that of the supervisor and must complete at least thirty hours of book and visual aid training and at least ten hours of training with an audiometer, as well as a minimum of one week with the supervisor before the trainee's first public contact alone. A trainee may not deal with the public outside the supervisor's office or place of business until these requirements have been fulfilled. After this initial period of training, the trainee must spend one day per week in the office or place of business with the supervisor. The trainee may not make any sale of a hearing instrument without first consulting with the supervisor and obtaining the supervisor's approval for the sale.

SECTION 7. AMENDMENT. Section 43-33-10 of the North Dakota Century Code is amended and reenacted as follows:

43-33-10. Notice to board of place of business - Notice to holders of license licensees - How given by board.

1. A ~~person who holds a license~~ licensee shall notify the board in writing of a regular address of the place or places where the ~~person~~ licensee engages or intends to engage in the fitting or the sale of hearing instruments.
2. The board shall keep a record of the place of business of ~~persons who hold licenses~~ licensees.
3. Any notice required to be given by the board to a ~~person who holds a license~~ licensee must be mailed by certified mail at the address of the last place of business of which the person has notified the board.
4. The board shall keep a record of the trainees, their place of training, and their supervisors.

SECTION 8. AMENDMENT. Section 43-33-11 of the North Dakota Century Code is amended and reenacted as follows:

43-33-11. Annual renewal of license - Fees - Continuing education - Effect of failure to renew. Each ~~person who engages in the fitting and sale of hearing instruments~~ licensee shall annually, before the expiration of the person's license, pay to the board the proper fees, together with a certificate showing attendance for a minimum of ten hours of continuing education per calendar year at schools or seminars approved by the board as defined by rule, pertaining to the fitting and sales of hearing instruments, for a renewal of a license. A thirty-day grace period must be allowed after the expiration of a license when a license may be renewed on payment of the proper fees together with the certificate of continuing education to the board. After expiration of the grace period, the board may renew a license upon the payment of the proper fees together with the certificate of continuing education to the board. A ~~person~~ licensee who applies for renewal, whose license

has expired, may not be required to submit to an examination as a condition to renewal, if the renewal application is made within two years from the date of the expiration and is accompanied with a certificate of continuing education during the twelve months immediately preceding the date of application.

SECTION 9. AMENDMENT. Subsection 2 of section 43-33-12 of the North Dakota Century Code is amended and reenacted as follows:

2. The board may revoke or suspend a person's license for any of the following causes:
 - a. The conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a hearing ~~instrument dispenser~~ aid specialist, or the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
 - b. Procuring of a license by fraud or deceit.
 - c. Unethical conduct. Unethical conduct means:
 - (1) Obtaining any fee or making any sale by fraud or misrepresentation.
 - (2) Knowingly employing, directly or indirectly, any suspended, or unregistered person to perform any work covered by this chapter.
 - (3) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.
 - (4) Advertising a particular model or type of hearing instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
 - (5) Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when that is not true, or using the word "doctor", "clinic", "audiologist", or similar words, abbreviations, or symbols which tend to connote the medical or audiological profession when that is not accurate, or use of the titles "hearing instrument specialist", "hearing aid specialist", "board-certified hearing aid specialist", or "board-certified hearing instrument specialist" when the qualifying requirements have not been met through the ~~national~~ international hearing ~~aid~~ society or national board for certification in hearing instrument sciences.
 - (6) Habitual intemperance.

- (7) Gross immorality.
 - (8) Permitting another to use the person's license.
 - (9) Advertising a manufacturer's product or using a manufacturer's name or trademark that implies a relationship with the manufacturer which does not exist.
 - (10) To directly or indirectly give or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a hearing instrument dispenser licensee, or to influence persons to refrain from dealing in the products of competitors.
 - (11) Sale of a hearing instrument to a person without adequate and proper audiometric testing.
 - (12) Sale of a hearing instrument to a person where the need for a hearing instrument has not been established after adequate and proper audiometric testing.
- d. Conducting business while suffering from a contagious or infectious disease.
 - e. Engaging in the fitting and sale of hearing instruments under a false name or alias with fraudulent intent.
 - f. For any violation of this chapter.
 - g. The fitting and sale of a hearing instrument to any person under eighteen years of age unless within six months before the fitting the person to be fitted has been examined by a physician and audiologist to determine whether there exist any physical deficiencies that would prohibit the effective use of a hearing instrument.

SECTION 10. A new subsection to section 43-33-14 of the North Dakota Century Code is created and enacted as follows:

At the board's discretion, provide funds to assist in providing continuing education for licensees.

SECTION 11. AMENDMENT. Section 43-33-15 of the North Dakota Century Code is amended and reenacted as follows:

43-33-15. Board of hearing instrument dispensers aid specialists.

1. There is established a board of hearing instrument dispensers aid specialists to carry out this chapter.
2. Members of the board must be residents of the state. The board consists of four hearing instrument dispensers licensees who are not audiologists or otolaryngologists, one otolaryngologist, three licensees

who are audiologists, and two consumers. Each hearing ~~instrument dispenser~~ aid specialist on the board must be primarily engaged as a hearing ~~instrument dispenser~~ aid specialist, must have at least five years of experience in this state, and must hold a valid license as a hearing ~~instrument dispenser~~ aid specialist.

3. The governor shall appoint the members of the board. The term of office of each member is four years. Before a member's term expires, the governor shall appoint a successor to assume the member's duties at the expiration of the term. A vacancy in the office of a member must be filled by appointment for the unexpired term. The members shall ~~annually~~ annually designate annually one member to serve as chairman and another to serve as secretary-treasurer. ~~No~~ A member of the board may not be reappointed to the board until at least one year after the expiration of that person's second term of office.
4. Except for the secretary-treasurer, each member shall serve without compensation except mileage and travel expenses while engaged in the performance of the duties of the office as is provided for state employees. The board shall establish the amount of compensation for the secretary-treasurer.

SECTION 12. AMENDMENT. Subsection 2 of section 43-37-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A hearing aid ~~dealer~~ specialist from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids in this state as provided in chapter 43-33.

SECTION 13. AMENDMENT. Subdivision m of subsection 1 of section 43-46-01 of the North Dakota Century Code is amended and reenacted as follows:

- m. The board ~~for licensing of hearing aid dealers and fitters~~ specialists;

Approved March 26, 2003
 Filed March 26, 2003

CHAPTER 373

SENATE BILL NO. 2202

(Senators Erbele, Espegard, Syverson)
(Representatives DeKrey, Headland, Pollert)

WATER WELL CONTRACTOR CONTINUING EDUCATION

AN ACT to amend and reenact sections 43-35-17 and 43-35-23 of the North Dakota Century Code, relating to continuing education requirements for water well contractors; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-35-17 of the North Dakota Century Code is amended and reenacted as follows:

43-35-17. Renewal of certificate - Continuing education. A certificate issued under this chapter is valid for up to one year and expires on the thirty-first day of December in the year of issuance. The certificate may be renewed by the board upon application. Every two years the application must include reporting information that the applicant completed ~~twelve~~ six hours of continuing education during the two-year reporting cycle which meets continuing education standards adopted by the board. The application must be made before April first in the year following the certificate's expiration, must be accompanied by a fee in an amount set by the board not to exceed fifty dollars, and must be accompanied by a bond as provided in section 43-35-14.

SECTION 2. AMENDMENT. Section 43-35-23 of the North Dakota Century Code is amended and reenacted as follows:

43-35-23. Continuing education - Preapproval requirements. Each certificate holder shall earn at least ~~twelve~~ six hours of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the state department of health, the state water commission, or by any board-approved course provider. A continuing education course must be preapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request preapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

SECTION 3. EFFECTIVE DATE. This Act becomes effective January 1, 2004, and applies to all applications for certificate renewal beginning with the 2004 certificate year.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 374

SENATE BILL NO. 2131

(Agriculture Committee)

(At the request of the Board of Registration for Professional Soil Classifiers)

SOIL CLASSIFIER APPLICATIONS AND FEES

AN ACT to amend and reenact sections 43-36-14, 43-36-15, and 43-36-16 of the North Dakota Century Code, relating to soil classifier application and registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-36-14 of the North Dakota Century Code is amended and reenacted as follows:

43-36-14. Application for registration. Application for registration as a professional soil classifier and for certification as a soil classifier-in-training must be on a form prescribed and furnished by the board, must contain statements made under oath showing the applicant's education, a detailed summary of the applicant's experience, and references as required by this chapter and must be accompanied by an application fee established by the board of not less than ~~five~~ fifty nor more than ~~twenty-five~~ two hundred dollars. If the national test is administered, the amount may not exceed five hundred dollars.

SECTION 2. AMENDMENT. Section 43-36-15 of the North Dakota Century Code is amended and reenacted as follows:

43-36-15. Registration fees.

1. The board shall establish registration fees provided:
 - a. The registration fee for in-state professional soil classifiers must be at least ~~twenty~~ fifty dollars but not more than ~~one~~ three hundred dollars.
 - b. The registration fee for in-state soil classifier-in-training certification or enrollment must be at least ~~ten~~ twenty-five dollars but not more than ~~fifty~~ one hundred dollars.
 - c. The registration fee for out-of-state professional soil classifiers must be at least ~~fifty~~ one hundred dollars but not more than ~~one~~ three hundred dollars.
2. If the board denies the issuance of a certificate to an applicant, the board shall retain the application fee.

SECTION 3. AMENDMENT. Section 43-36-16 of the North Dakota Century Code is amended and reenacted as follows:

43-36-16. Examinations. Examinations must be held at such times and places as the board determines. Examinations required on fundamental soil subjects may be taken at any time prescribed by the board. The final examinations may not be taken until the applicant has completed a period of soil classifying experience as provided in this chapter. The passing grade on any examination may not be less than seventy percent. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board of not less than ~~ten~~ twenty-five nor more than ~~twenty-five~~ fifty dollars. Any candidate for registration having an average grade of less than fifty percent may not apply for reexamination for a period of one year from the date of such examination.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 375**SENATE BILL NO. 2142**

(Human Services Committee)

(At the request of the State Board of Occupational Therapy Practice)

OCCUPATIONAL THERAPIST LICENSING

AN ACT to amend and reenact subsection 1 of section 43-40-15 of the North Dakota Century Code, relating to the licensure of occupational therapists and occupational therapy assistants; and to repeal section 43-40-17 of the North Dakota Century Code, relating to consultations and evaluations performed by occupational therapists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-40-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Any license issued under this chapter is subject to ~~annual~~ biennial renewal and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but ~~no~~ late renewal of a license may not be granted more than three years after its expiration.

SECTION 2. REPEAL. Section 43-40-17 of the North Dakota Century Code is repealed.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 376

SENATE BILL NO. 2156

(Human Services Committee)

(At the request of the North Dakota Board of Social Work Examiners)

SOCIAL WORKER LICENSING

AN ACT to amend and reenact section 43-41-01, subsections 2, 4, and 5 of section 43-41-02, subsection 1 of section 43-41-03, sections 43-41-04, 43-41-04.1, 43-41-05, and 43-41-07, subsections 1, 2, and 5 of section 43-41-08, and sections 43-41-09, 43-41-11, and 43-41-12 of the North Dakota Century Code, relating to the licensure of social workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-41-01 of the North Dakota Century Code is amended and reenacted as follows:

43-41-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of social work examiners.
2. "College or university" means an institution of higher education whose social work program has been accredited by an accrediting body approved by the board.
3. "Licensed certified social worker" means an individual who has a doctorate or master's degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure.
- 3- 4. "Licensed independent clinical social worker" means an individual who has a doctorate or master's degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure or has been registered by the board for third-party reimbursement before August 1, 1997.
- 4- 5. "Licensed social worker" means an individual who has a baccalaureate degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure.
- 5- 6. "Private practice of social work" means the independent practice of social work by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or an agency are not considered to be the private practice of social work.
- 6- 7. Social work practice consists of the professional application of social work values, principles, and techniques in: helping people obtain tangible services; counseling; psychotherapy with individuals, families, and groups; helping communities or groups to improve social and health

services; providing social casework; directly supervising programs providing social work services; social work education; social work research; or any combination of these. The practice of social work requires knowledge of human development and behavior, of social, economic, and cultural institutions, and of the interaction of all of these factors.

SECTION 2. AMENDMENT. Subsections 2, 4, and 5 of section 43-41-02 of the North Dakota Century Code are amended and reenacted as follows:

2. Nothing in this chapter may be construed to prevent students who are enrolled in programs of study leading to social work degrees from interning with a licensed social worker or, a licensed certified social worker, or a licensed independent clinical social worker.
4. Nothing in this chapter prevents the employment of social work designees by hospitals, ~~intermediate~~ basic care facilities, or skilled nursing homes facilities, provided these persons work under the direction of a social worker or social work consultant licensed under this chapter.
5. This chapter does not require public or appointed officials or administrators, acting in that capacity, or any other social or human service administrators who do not hold themselves out to the public as social workers, by title or description of services, to be licensed ~~or certified~~ under this chapter. ~~However, any individual may be licensed if otherwise qualified under this chapter.~~

SECTION 3. AMENDMENT. Subsection 1 of section 43-41-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Only those persons licensed to practice under this chapter may ~~use the title " represent themselves as a licensed social worker" and the initials "l.s.w." after the person's name, or the title "~~ licensed certified social worker" and the initials "l.c.s.w." after the person's name, or licensed independent clinical social worker.

SECTION 4. AMENDMENT. Section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

43-41-04. Licenses.

1. Except as otherwise provided in this chapter, no person may engage in social work practice in this state unless that person is a licensed social worker ~~or,~~ a licensed certified social worker, or a licensed independent clinical social worker.
2. The board shall issue a license as a licensed social worker to an applicant who:
 - a. Has a baccalaureate degree in a social work ~~or social welfare program approved by the board~~ from a college or university ~~accredited by the council on social work education.~~
 - b. Has passed an examination approved by the board for this purpose.

- c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
- 3. The board shall issue a license as a licensed certified social worker to an applicant who:
 - a. Has a doctorate or master's degree in social work from a ~~school of social work accredited by the council on social work education college or university~~.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
- 4. The board shall issue a license as a licensed independent clinical social worker to an applicant who:
 - a. Has a doctorate or master's degree in social work from a ~~school of social work accredited by the council on social work education college or university~~.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant has successfully completed within four years, three thousand hours of ~~full-time~~, post-master's clinical social work experience under the supervision of a licensed certified social worker who has two years of experience, a licensed independent clinical social worker, a licensed ~~clinical~~ psychologist with a doctorate degree, or a licensed psychiatrist. ~~This requirement must be waived if the applicant was approved by the board for third-party reimbursement or certified for private practice before August 1, 1997.~~
 - d. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.

SECTION 5. AMENDMENT. Section 43-41-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-41-04.1. Fees. The board shall set by rule all the following fees ~~authorized by this chapter~~. ~~The fees may not exceed the following amounts:~~

- 1. Application fee_ \$50.00
- 2. License fee_ \$150.00
- 3. Renewal fee_ \$100.00
- 4. Late fee_ \$300.00
- 5. Administrative fees.
- 6. Continuing education fees.

SECTION 6. AMENDMENT. Section 43-41-05 of the North Dakota Century Code is amended and reenacted as follows:

43-41-05. Private practice of social work. A person may not engage in the private practice of social work unless that person has been licensed by the board as a licensed independent clinical social worker ~~or was certified to practice privately by the board before August 1, 1997.~~

SECTION 7. AMENDMENT. Section 43-41-07 of the North Dakota Century Code is amended and reenacted as follows:

43-41-07. Reciprocity Qualification for licensure by an applicant licensed in another jurisdiction. An applicant may be granted ~~reciprocity~~ a license upon satisfactory proof to the board that the applicant is licensed in good standing under the laws of a state or territory of the United States another jurisdiction that imposes substantially the same requirements as this chapter. ~~Failure to provide satisfactory proof will require taking and passing the examination required by this chapter.~~

SECTION 8. AMENDMENT. Subsections 1, 2, and 5 of section 43-41-08 of the North Dakota Century Code are amended and reenacted as follows:

1. The governor shall appoint the North Dakota board of social work examiners which must consist of six members, two of whom must be licensed social workers, ~~two~~ one of whom must be a licensed certified social workers worker, one of whom must be a licensed independent clinical social worker, and two of whom must be laypersons. Board members must demonstrate no conflict of interest. ~~The professional members comprising the first appointed board must be persons who are eligible for licensing as social worker and certified social worker.~~
2. The term of office of each board member must be for three years; ~~provided, that of the members first appointed, two must be appointed for a term of one year, two must be appointed for a term of two years, and two must be appointed for a term of three years~~ with two members appointed annually. No member may serve more than two consecutive terms.
5. Board members shall, ~~at the first regular meeting after July 1, 1983, and annually thereafter,~~ annually elect by a majority vote of the board, a chairperson who shall preside at meetings of the board and a vice chairperson who shall preside at meetings of the board in the chairperson's absence. A majority of the members of the board constitutes a quorum.

SECTION 9. AMENDMENT. Section 43-41-09 of the North Dakota Century Code is amended and reenacted as follows:

43-41-09. Duties and responsibilities of board. In addition to the duties set forth elsewhere in this chapter, the board shall:

1. Adopt rules ~~and regulations~~ to administer and carry out the provisions of this chapter.

2. ~~2. Publish~~ Produce an annual list of the names and ~~addresses~~ level of licensure of all persons licensed under this chapter and make the list available upon request.
3. ~~3. Publish an annual list of the names and addresses of persons registered as private practitioners and make the list available upon request.~~
4. At its discretion, ~~appoint a secretary, who need not be a member of the board,~~ employ staff and ~~fix that person's~~ provide for staff compensation.
- ~~5.~~ 4. Approve ~~and administer an examination~~ examinations for licensing social workers.
- ~~6.~~ 5. Establish fees and receive all moneys collected under this chapter.
- ~~7.~~ 6. Deposit and disburse all fees and moneys collected by the board in accordance with section 54-44-12.
- ~~8.~~ 7. Recommend prosecution for violations of this chapter to the appropriate state's attorney.
- ~~9.~~ 8. Recommend ~~that~~ the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.
- ~~10.~~ 9. Establish continuing education requirements for license renewal.
- ~~11.~~ 10. Adopt a code of social work ethics.
- ~~12.~~ Publish an annual report of board activities.
- ~~13.~~ Issue provisional or probationary licenses.

SECTION 10. AMENDMENT. Section 43-41-11 of the North Dakota Century Code is amended and reenacted as follows:

43-41-11. Hearings and disciplinary proceedings - Appeals.

1. Upon the filing of a written and signed complaint that alleges that a licensee practicing in this state has engaged in conduct identified as grounds for disciplinary action under section 43-41-10, and which sets forth information upon which a reasonable and prudent person might believe that further inquiry should be made, the board shall cause the matter to be investigated.
2. The board may investigate a complaint on its own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the anonymity of the complainant.
3. If the investigation reveals grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee, ~~by certified mail,~~ a notice of disciplinary action setting forth the allegations upon which the action is based, as well as a specification of the issues to be considered and determined.

4. If a written response contesting the allegations is not received by the board within twenty days of the date that the notice of disciplinary action was received or refused, the allegations must be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.
5. ~~Following the initiation of a disciplinary action, as provided in subsection 3, the board may direct the chairman to select a panel of three board members and offer the licensee the opportunity to meet informally with that panel for the purpose of determining whether the disciplinary action, including appropriate sanctions, can be resolved by mutual agreement. Any agreement reached between the panel and the licensee must be ratified by a majority of the board. The board may at any time enter into an informal resolution to resolve the complaint or disciplinary action.~~
6. ~~If an informal agreement cannot be reached, or is not ratified, or the board elects not to offer the licensee the opportunity for informal resolution, the licensee is entitled to a hearing under chapter 28-32. For purposes of the hearing, the provisions of section 28-32-21 apply only to the licensee.~~
7. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-42.

SECTION 11. AMENDMENT. Section 43-41-12 of the North Dakota Century Code is amended and reenacted as follows:

43-41-12. Renewal of licenses.

1. All licenses are effective when ~~issued~~ granted by the board.
2. All licenses of licensed social workers ~~and~~, licensed certified social workers, and licensed independent clinical social workers expire on ~~December 31, 1985, and on December thirty-first of every two years thereafter~~ odd-numbered year.
3. A license may be renewed by payment of the renewal fee ~~set by the board~~ and completion of the continuing education requirements set by the board, provided the applicant's license is not currently revoked or ~~suspended~~ grounds for denial under section 43-41-10 do not exist.
4. If the application for renewal is not received on or before the expiration date, the license expires and the person may not practice social work until ~~the~~ a new application is made and a license is renewed granted by the board.
5. At the time of renewal the board shall require each applicant to present satisfactory evidence that the applicant has completed the continuing education requirements specified by the board.
6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory ~~proof~~ evidence of completion of the continuing education requirements, the ~~applicant may renew the license within six months after the expiration of the previous license upon payment to the board of the amount of the renewal fee and by presenting satisfactory proof that the continuing~~

education requirements have been met. The board may also charge a late fee. If a license is not renewed within six months after the expiration of the license, a new application for licensure must be made licensee must reapply for licensure.

7. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 377

SENATE BILL NO. 2218 (Senator Andrist)

ENVIRONMENTAL HEALTH SPECIALTY LICENSES

AN ACT to amend and reenact section 43-43-04 of the North Dakota Century Code, relating to the creation of limited or specialty practice licenses within the practice of environmental health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-43-04 of the North Dakota Century Code is amended and reenacted as follows:

43-43-04. Powers and duties of state health officer. The state health officer shall adopt rules consistent with and necessary for the implementation and enforcement of this chapter, including rules concerning the:

1. Qualifications and requirements for licensure under this chapter.
2. Application for licensure and renewal of license.
3. Licensure.
4. Fees that may not exceed fifty dollars for licensure fees.
5. Scope of practice.
6. Ethical standards of conduct.
7. Continuing competency and education requirements.
8. Grievances and complaints.
9. Reimbursement of advisory board expenses.
10. Emergency exemptions as to requirements for licensure under this chapter.
11. Qualifications and requirements for specialty licenses or credentials within the scope of practice of an environmental health practitioner, including specialty licenses or credentials for limited practice areas.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 378

SENATE BILL NO. 2143

(Human Services Committee)

(At the request of the Board of Addiction Counseling Examiners)

ADDICTION COUNSELOR LICENSING

AN ACT to amend and reenact subsection 1 of section 43-45-05.1 and section 43-45-07.1 of the North Dakota Century Code, relating to the licensure of addiction counselors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall issue an initial one-year license as an addiction counselor to an applicant who:
 - a. Has successfully completed coursework, approved by the board, at an accredited college or university;
 - b. Has successfully completed ~~an examination~~ one or more oral or written examinations approved by the board for this purpose;
 - c. Has successfully completed an addiction counselor training program approved by the board, a practicum, and a work experience or internship; and
 - d. Has satisfied the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.

SECTION 2. AMENDMENT. Section 43-45-07.1 of the North Dakota Century Code is amended and reenacted as follows:

43-45-07.1. Grounds for disciplinary proceedings. The board may deny an application, refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or holder of the license has engaged in unprofessional conduct. Unprofessional conduct includes:

1. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.
2. Violating rules set by the board.
3. Violating a provision of this chapter.
4. Violating the professional code of conduct as adopted by the board.
5. Being adjudged guilty of an offense determined by the board to have a direct bearing on an applicant's or holder of the license's ability to serve the public as an addiction counselor or being adjudged guilty of any

offense and being insufficiently rehabilitated as determined by the board under section 12.1-33-02.1.

One year from the date of the revocation, the license holder may make application for initial licensure.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 379**HOUSE BILL NO. 1336**

(Representatives Maragos, D. Johnson, Nicholas)
(Senator Traynor)

DEAF AND HARD OF HEARING INTERPRETING

AN ACT to create and enact two new subsections to section 43-52-03 of the North Dakota Century Code, relating to exceptions to requirements for the practice of interpreting for the deaf and hard of hearing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 43-52-03 of the North Dakota Century Code are created and enacted as follows:

An individual working in an elementary or secondary school who has successfully completed a three-year educational interpreter certificate program of study or who has passed the educational interpreter performance assessment at a level of 3.5 or higher. The individual may work in the school setting without national certification until August 1, 2005, if the individual is being mentored by a trained mentor who is either a certified interpreter or a deaf adult. To continue working in the school setting after August 1, 2005, the individual must have obtained national certification.

An individual who has successfully completed an accredited interpreter training program from interpreting without certification for a period of up to two years from the date of completion of the program if, during that period, the individual is mentored by a trained mentor who is either a certified interpreter or a deaf adult.

Approved March 27, 2003

Filed March 28, 2003