

OCCUPATIONS AND PROFESSIONS

CHAPTER 356

SENATE BILL NO. 2299

(Senator Christmann)
(Representative Grande)

AN ACT to create and enact a new section to chapter 43-01 of the North Dakota Century Code, relating to utility easement abstracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-01 of the North Dakota Century Code is created and enacted as follows:

Utility easement documentation abstracts upon request. Upon request, an abstracter shall furnish an abstract to title to the surface of any tract of land omitting documents that affect utility easements, except for the initial document severing the interest from the surface and a document limiting, modifying, or releasing the interest. In addition and upon request, an abstracter shall furnish a list showing the names of the grantor and grantee and the recording data of all related documents pertaining to a utility easement which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstracter may charge a fee of up to one dollar and fifty cents.

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 357**HOUSE BILL NO. 1147**

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

AN ACT to amend and reenact sections 43-02.2-02, 43-02.2-04, and 43-02.2-04.1, subsections 1 and 5 of section 43-02.2-06, subsection 1 of section 43-02.2-09, section 43-02.2-10, subsections 1 and 3 of section 43-02.2-11, and subsections 1, 2, 3, 5, 6, and 7 of section 43-02.2-12 of the North Dakota Century Code, relating to certified public accountants and the practice of public accountancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Board" means the state board of accountancy.
2. "Certificate" means a certificate as "certified public accountant" issued under section 43-02.2-04 or provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.
3. "Client" means a person or entity that agrees with a licensee to receive any professional service other than an employer-employee relationship.
4. "Firm" means a sole proprietorship, a corporation, a partnership, or any combination thereof, or any other entity permitted by law.
5. "Licensee" means the holder of a certificate, license, or permit issued under this chapter or prior law.
6. "NASBA national qualification appraisal service" means the section of the national association of state boards of accountancy that either reviews the CPA licensure requirements of its member jurisdictions to determine which CPA licensure requirements are substantially equivalent to the licensure requirements of the Uniform Accountancy Act or evaluates the credentials of individuals who are licensed in jurisdictions that are not substantially equivalent to determine their individual substantial equivalency.
7. "Permit" means a permit to practice public accountancy issued under section 43-02.2-06 or 43-02.2-07, prior law, or corresponding provisions of the laws of other states.
7. 8. "Practice of" or "practicing" public accountancy means the performance or the offering to perform by a person or firm holding out to the public as a licensee, for a client or potential client, services involving the use of

accounting or auditing skills including the issuance of reports on financial statements, but not including management advisory, financial advisory, or consulting services, bookkeeping services, or the preparation of tax returns or the furnishing of advice on tax matters unless provided by a firm with a permit issued under section ~~43-02.2-06~~ 43-02.2-07 of certified public accountants or licensed public accountants.

- ~~9.~~ 9. "Practice privilege" means the privilege for a person to practice public accountancy described in, and subject to the conditions contained in, subsection 1 of section 43-02.2-04.1.
- ~~8.~~ 10. "Practice review" means a study, appraisal, or review of one or more aspects of the professional work of a firm in the practice of public accountancy, by a person or persons who hold certificates and are in the practice of public accounting and who are not affiliated with the person or firm being reviewed.
11. "Principal place of business" means the office location designed by the licensee for purposes of substantial equivalence and reciprocity.
- ~~9.~~ 12. "Professional" means arising out of or related to the specialized knowledge or skills associated with certified public accountants or licensed public accountants.
- ~~10.~~ 13. "Report", when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. A statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is an accountant, auditor, or is in the business of accounting, or from the language of the report. "Report" includes any form of language that disclaims an opinion when the form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language. "Report" includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.
- ~~14.~~ 14. "Rule" means any rule, regulation, or other written directive of general application duly adopted by the board.
- ~~12.~~ 15. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, ~~and~~ Guam, and the Commonwealth of the Northern Mariana Islands.
- ~~13.~~ 16. "Substantial equivalency", as used in section 43-02.2-04, pertaining to certification by reciprocity, and in section 43-02.2-04.1, pertaining to the practice privilege, is a determination by the board or its designee that another jurisdiction's education, examination, and experience requirements are comparable to or exceed that of the Uniform Accountancy Act, or that an individual's education, examination, and experience qualifications are comparable to or exceed that of the

Uniform Accountancy Act. In ascertaining substantial equivalency as used in this chapter, the board shall take into account the qualifications without regard to the sequence in which experience, education, or examination requirements were attained.

SECTION 2. AMENDMENT. Section 43-02.2-04 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-04. Certified public accountants.

1. The board shall grant the certificate of "certified public accountant" to any person of good moral character who meets the requirements of this section.
2. For the purposes of this chapter, good moral character means the lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the grounds of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.
3. The board shall grant or renew certificates to persons who make application and demonstrate that their qualifications are in accordance with the following:
 - a. The board shall issue a certificate to a holder of a certificate, license, or permit issued by another state, provided that that state extends similar reciprocity to the certificate holders of this state, and upon a showing that:
 - a- The applicant passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this state; is eligible under the substantial equivalency standard set out in subsection 1 of section 43-02.2-04.1. An application under this section may be made through the NASBA qualification appraisal service.
 - b. The applicant With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in subdivision a, the board shall issue a certificate to a holder of a certificate, license, or permit issued by another state upon a showing that:
 - (1) Meets all current requirements in this state for issuance of a certificate, at the time application is made; or The applicant passed the uniform CPA examinations;
 - (2) At the time of the issuance of the applicant's certificate in the other state, met all such requirements then applicable in this state; and The applicant had four years of experience of the

type described in subsection 14 or meets comparable requirements prescribed by the board by rule, after passing the examination upon which the applicant's certificate was based and within ten years immediately preceding the application; and

- (3) If the applicant's certificate, license, or permit was issued more than four years prior to the application for issuance of an initial certificate under this section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under subsection 15.
- c. The applicant ~~has paid~~ shall pay the applicable ~~fees~~ fee.
- d. An individual who establishes that individual's principal place of business in this state must obtain a certificate under this section.
4. The board shall issue a certificate to a holder of a recognized accounting designation from a jurisdiction or organization outside of the United States, provided such jurisdiction or organization extends similar reciprocity to the certificate holders of this state, and upon a showing to the board's satisfaction that the applicant:
- a. Meets the good moral character requirement of subsection 2;
 - b. Meets the substantial equivalent of the education requirements of subsection 5 and the experience requirements of subsection 14 at the time of application, or at the time of the issuance of the designation by the other jurisdiction or organization met the education and experience requirements then applicable in this state;
 - c. Has completed examinations generally equivalent to those prescribed under subsection 6;
 - d. Has satisfactorily completed any additional examinations that the board prescribes; and
 - e. Has paid the applicable fees.
5. The education requirement for a certificate is as follows:
- a. Through December 31, 1999, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, and an accounting concentration or equivalent as determined by board rule to be appropriate, or four years of public accounting experience on one's own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state.
 - b. After December 31, 1999, at least one hundred fifty semester hours of college education including a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by board

rule to be appropriate. An individual who on December 31, 1999, meets the requirements of subdivision a may obtain a certificate under subdivision a if the individual passes the examination in accordance with board rules before December 31, 2004.

6. The examination required to be passed as a condition for the granting of a certificate must test the applicant's knowledge of the subjects of accounting and auditing. ~~A grade of seventy-five percent is required in each subject to constitute a passing grade.~~ The time for holding the examination must be fixed by the board and may be changed from time to time. The board may prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided that the board to the extent possible sees to it that the grading of the examination and the passing grade requirements are uniform with those applicable in all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants and may contract with third parties to perform administrative services with respect to the examination it deems appropriate to assist it in performing its duties. The board may permit a candidate to take the examination if the board is satisfied that the candidate will complete the educational requirements of this section within six months after the candidate's application to take the examination.
7. An applicant must pass the examination provided for in subsection 6, as specified by rule, in order to qualify for a certificate.
8. An applicant must be given credit for any and all sections of an examination passed in another state if such credit would have been given under then applicable requirements, if the applicant had taken the examination in this state.
9. The board may in particular cases waive or defer any of the requirements of subsections 7 and 8 regarding the circumstances under which the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.
10. The board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the board by rule, for examination or reexamination.
11. A certificate of certified public accountant must be renewed each year, with renewal subject to payment of fees and any other requirements prescribed by the board.
12. The board may require examination of other related subjects as specified by rule.
13. Applicants for initial issuance or renewal of certificates under this section shall list in the applications all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized accounting designation, and each holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after

its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized accounting designation by another state or jurisdiction.

14. After December 31, 2000, an applicant for initial issuance of a certificate under this section shall show that the applicant has had one year of experience. This experience must include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. This experience must be verified and must meet any other requirements prescribed by the board by rule. This experience is acceptable if it was gained through employment in government, industry, academia, or public accounting. This experience requirement does not apply to those who received a certificate from this state prior to January 1, 2000.
15. The board may require by rule, as a condition for granting and renewal of certificates under this section, that applicants show completion of continuing education meeting requirements of board rule. The continuing education rules may include provisions for exceptions and must include reasonable provision for an applicant who cannot meet the continuing education requirements due to circumstances beyond the applicant's reasonable control.
16. ~~As an alternative to the requirements of subsection 3, the board shall issue a certificate to an individual who holds a certificate from another state, who establishes the individual's principal place of business within this state and has submitted the applicable application and fees, provided that the individual or the other state has attained substantial equivalency.~~

SECTION 3. AMENDMENT. Section 43-02.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-04.1. Substantial equivalency.

1. An individual whose principal place of business is not in this state shall have all the privileges of certificate holders and licensees of this state without the need to obtain a certificate or permit under section 43-02.2-04, if the individual holds a valid ~~certificate~~ license as a CPA from any state that ~~has attained substantial equivalency~~ the NASBA national qualification appraisal service has verified to be in substantial equivalence with the CPA licensure requirements of the Uniform Accountancy Act, or, if the individual's CPA qualifications are deemed to meet substantial equivalency license is not from any state ~~which the NASBA national qualification appraisal service has verified to be in substantial equivalence with the CPA licensure requirements of the Uniform Accountancy Act, that the individual has obtained from the NASBA national qualification appraisal service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act. An individual who passed the uniform CPA examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in the Uniform Accountancy Act for purposes of this section.~~

2. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person or by mail, telephone, or electronic means, under this section shall be granted practice privileges in this state and may use the title "CPA" or "certified public accountant" and no notice, fee, or other submission shall be provided by any such individual. Such an individual is subject to the requirements of subsection 3.
3. Individuals intending to enter the state under this provision shall submit the applicable application and fees prior to entry. Any individual licensee of another state exercising the privilege afforded under this section and the firm that employs that licensee hereby ~~consent~~ simultaneously consent, as a condition of the grant of this privilege:
- a. To the personal and subject matter jurisdiction and disciplinary authority of the board;
 - b. To comply with this chapter and the board's rules;~~and~~
 - c. That in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a firm; and
 - d. To the appointment of the state board which issued the person's ~~certificate~~ license as the person's agent upon whom process may be served in any action or proceeding by this board against the licensee.
- ~~2.~~ 4. A licensee of this state offering or rendering services or using the licensee's CPA title in another state is subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy of another state.

SECTION 4. AMENDMENT. Subsections 1 and 5 of section 43-02.2-06 of the North Dakota Century Code are amended and reenacted as follows:

1. A firm must hold a firm permit issued by the board, in order to practice public accounting or to use the titles "CPAs", "LPAs", "CPA firm", "LPA firm", or similar titles. The board shall grant or renew permits to practice public accountancy to firms that make application and demonstrate their qualifications in accordance with this section. The board shall grant or renew permits to practice as a CPA or LPA firm to applicants that demonstrate their qualifications therefor in accordance with this subsection.
 - a. The following must hold a permit issued under this subsection:
 - (1) Any firm with an office in this state practicing public accountancy as defined in subsection 8 of section 43-02.2-02; or
 - (2) Any firm with an office in this state that uses the title "CPA", "LPA", "CPA firm", or "LPA firm", or similar titles.

- b. A firm which is not subject to the requirements of subdivision a may perform professional services within the practice of public accountancy while using the title "CPA" or "CPA firm" in this state without a permit issued under this subsection only if:
- (1) It performs such services through an individual with practice privileges under subsection 1 of section 43-02.2-04.1; and
 - (2) It can lawfully do so in the state where such individuals with practice privileges have their principal place of business.
5. The board ~~shall~~ may charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.

SECTION 5. AMENDMENT. Subsection 1 of section 43-02.2-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The board may revoke any certificate, license, practice privilege, or permit issued under this chapter or corresponding provisions of prior law; suspend any such certificate, license, practice privilege, or permit or refuse to renew any such certificate, license, practice privilege, or permit for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee or holder of a practice privilege; impose an administrative fine not exceeding one thousand dollars; or place any licensee or holder of a practice privilege on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:
 - a. Fraud or deceit in obtaining a certificate, license, practice privilege, or permit;
 - b. Cancellation, revocation, suspension, or refusal to renew a certificate, license, practice privilege, or permit in any other state or jurisdiction for any cause;
 - c. Failure, on the part of a holder of a certificate, license, practice privilege, or permit, to maintain compliance with the requirements for issuance or renewal of such certificate, license, practice privilege, or permit or to report changes to the board under section 43-02.2-04, 43-02.2-06, or 43-02.2-07;
 - d. Revocation or suspension of the right to practice before any state or federal agency;
 - e. Dishonesty, fraud, or gross negligence in the performance of services as a licensee or in the filing or failure to file the licensee's own income tax returns;
 - f. Violation of any provision of this chapter or rule adopted by the board under this chapter;
 - g. Violation of any rule of conduct adopted by the board under section 43-02.2-03;

- h. Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
- i. Performance of any fraudulent act while holding a certificate, license, practice privilege, or permit issued under this chapter or prior law;
- j. Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee; and
- k. Making any false or misleading statement or verification, in support of an application for a certificate, license, or permit filed by another.

SECTION 6. AMENDMENT. Section 43-02.2-10 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-10. Enforcement procedures - Investigations. If this chapter authorizes the board to revoke, deny, or suspend the certificate, license, practice privilege, or permit of any licensee or holder of a practice privilege, the ~~licensee~~ individual or firm has a right to a hearing before the board on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32 relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. During the investigation of any complaint or other information suggesting violations of this chapter, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of the pending investigation must be treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

SECTION 7. AMENDMENT. Subsections 1 and 3 of section 43-02.2-11 of the North Dakota Century Code are amended and reenacted as follows:

1. If the board has suspended, refused to renew, or revoked a certificate, license, practice privilege, or a permit, the board may modify the suspension or reissue the certificate, license, practice privilege, or permit upon application in writing by the person or firm affected and for good cause shown and payment of a fee established by the board.
3. Before reissuing or terminating the suspension of a certificate, license, practice privilege, or permit under this section, the board may require the applicant to show successful completion of specified continuing education and may make the reinstatement conditional and subject to specified conditions, including satisfactory completion of a practice review conducted as specified by the board.

SECTION 8. AMENDMENT. Subsections 1, 2, 3, 5, 6, and 7 of section 43-02.2-12 of the North Dakota Century Code are amended and reenacted as follows:

1. A person or firm that is not a licensee or otherwise authorized to practice in this state under subsection 1 of section 43-02.2-04.1 or subdivision b of subsection 1 of section 43-02.2-06 may not practice or offer to practice public accountancy or issue a report on financial statements of any other person, firm, organization, or governmental unit. Individual licensees may not practice public accountancy unless they do so within a firm that holds a permit issued under this chapter or is otherwise exempt from the firm permit requirement. These prohibitions do not apply to an officer, partner, or employee of any firm or organization affixing the person's name or signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the signer holds therein, does not prohibit any act of a public official or employee in the performance of duties as such, and does not prohibit the performance by any persons of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. This prohibition does not apply to transactions between manufacturing and sales organizations and their customers when accounting services accompany the sale of products provided that such accounting services are incidental and that any financial report made is clearly titled "unaudited financial report".
2. A person not holding a valid certificate or practice privilege issued under this chapter may not use or assume the title or designation "certified public accountant", or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.
3. A firm may not practice public accountancy or assume or use the title or designation "certified public accountant", or the abbreviation "CPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is a certified public accountant firm unless the firm holds a valid permit issued under this chapter or is otherwise exempt from the firm permit requirement.
5. A firm may not practice public accountancy, or assume or use the title or designation "licensed public accountant", the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is a licensed public accountant firm unless the firm holds a valid permit issued under this chapter or is otherwise exempt from the firm permit requirement.
6. A person or firm not holding a valid certificate, license, practice privilege, or permit issued under this chapter or otherwise exempt from the firm permit requirement may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "public accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the titles "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "LA", "PA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviations "CPA" or "LPA".

7. A person or firm not holding a valid certificate, license, practice privilege, or permit issued under this chapter or otherwise exempt from such requirement may not assume or use any title or designation that includes the words "accountant", "auditor", or "accounting", or other terms in any manner that implies such person or firm holds such a certificate, license, or permit or has special competence as an accountant or auditor. This subsection does not prohibit any officer, partner, or employee of any firm or organization from affixing the person's name or signature to any reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds and does not prohibit any act of a public official or employee in the performance of duties.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 358

HOUSE BILL NO. 1330

(Representatives Keiser, Ekstrom, Thoreson)
(Senators Grindberg, Klein, Triplett)

AN ACT to amend and reenact sections 43-03-01, 43-03-02, 43-03-03, 43-03-04, 43-03-05, 43-03-06, 43-03-08, 43-03-09, 43-03-10, 43-03-11, 43-03-13, 43-03-14, 43-03-15, 43-03-16, 43-03-17, 43-03-18, 43-03-19, 43-03-20, and 43-03-22 of the North Dakota Century Code, relating to the regulation of architects and landscape architects; to repeal sections 43-03-12, 43-03-24, and 43-03-25 of the North Dakota Century Code, relating to the regulation 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 of 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 and landscape architecture.
3. "Landscape architect" means an individual who ~~practices~~ is registered as a landscape architecture architect under this chapter.
4. "Landscape architecture" does not include the practice of engineering and practice of professional engineering as defined under section 43-19.1-02.
5. "Practice of architecture" means rendering or offering to render service to clients generally, including any one or any combination of the following practices or professional services: advice, consultation, planning, architectural design, drawings, and specifications; and general administration of the contract as the owner's representative during the construction phase in which expert knowledge and skill are required in connection with the erection, enlargement, or alteration of any building, or the equipment, or utilities thereof, or the accessories thereto if the safeguarding of the public health, safety, or welfare is concerned or involved. The term includes the making of architectural plans and specifications for buildings.
6. "Practice of landscape architecture" means rendering or offering to render service to clients generally, including any one or any combination of the following practices or professional services: advice, consultation, planning, landscape architectural design, drawings, and specifications; and general administration of the contract as the owner's representative during the construction phase in which expert knowledge

and skill are required in connection with landscape enhancement or landscape development, including the formulation of graphic or written criteria to govern the planning or design of land construction projects, production of overall site plans, landscape grading, and landscape drainage plans, planting plans, irrigation plans, and construction details if the safeguarding of the public health, safety, or welfare is concerned or involved.

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 a person making plans and specifications for a building to be constructed by or for that person; a:
 - a. A person supervising the erection, enlargement, or alteration of a building being constructed by or for that person; 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; 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; or
 - b. A person preparing plans and specifications or designing, planning, or administering the construction contracts for the construction, alteration, remodeling, or repair of:
 - (1) A private residence;
 - (2) A building that under applicable building code is not designed for occupancy by ten or more individuals, does not exceed two stories in height exclusive of a one-story basement, and is:
 - (a) A garage;
 - (b) A commercial or industrial building;
 - (c) An office building;
 - (d) A preengineered metal building;
 - (e) A building for the marketing, storage, or processing of farm products;
 - (f) A warehouse; or
 - (g) Rental apartment units;
 - (3) A farm building; or

- (4) A nonstructural alteration of any nature to any building if the alteration does not affect the safety of the occupants of the building.
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; or
 - d. An irrigation designer, contractor, or service provider in the course of preparing irrigation plans or installing, repairing, or maintaining irrigation systems.
3. This chapter does not:
- a. Apply to an officer or employee of the United States government while engaged in governmental work in this state;
 - b. Curtail or extend the right of any other profession regulated in this state;
 - c. Prevent the independent employment of a registered professional engineer for any professional service related solely to civil, structural, mechanical, or electrical engineering in connection with any building or building project; or
 - d. Supersede, override, or amend the provisions of chapter 43-19.1 regarding registration of professional engineers and land surveyors.

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

43-03-03. State board of architecture and landscape architecture - Members - Term of office - How vacancies filled. The state board of architecture ~~must consist~~ and landscape architecture consists of three members appointed by the governor for terms of six years each with their terms of office so arranged that one term and only one expires on March fourteenth of each odd-numbered year. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until that member's successor is appointed and qualified, and any vacancy occurring in the board must be filled by the governor for the unexpired term.

SECTION 4. AMENDMENT. Section 43-03-04 of the North Dakota Century Code is amended and reenacted as follows:

43-03-04. Qualifications of members of board - Removal of members. A Each member of the board must be a resident of this state who is an architect who has been a resident of and in active practice as principal in this state as an architect for not less than ~~three~~ five years prior to before appointment. The governor may remove any of the ~~members~~ member of the board for inefficiency or neglect of duty.

SECTION 5. AMENDMENT. Section 43-03-05 of the North Dakota Century Code is amended and reenacted as follows:

43-03-05. Meetings of board - Officers elected.

1. The board shall hold regular meetings on the first Monday of April and of October of each year and may hold such special meetings as are necessary regular meetings at least once each year, with the date and location set by the board. The board may meet as designated by a majority of the board. The board shall select from among its members a president and a ~~secretary~~ secretary-treasurer.
2. The board may:
 - a. Administer an oath;
 - b. Take an affidavit;
 - c. Summon a witness;
 - d. Take testimony as to matters coming within the scope of the board's duties;
 - e. Enter an interstate or intrastate agreement or association with other boards of licensure for the purpose of establishing reciprocity, developing examinations, evaluating applicants, or other activities to enhance the services of the board to the state, the registrant, or the public; and
 - f. Appoint or contract an executive director and any other individual the board determines is necessary to administer the affairs of the board.
3. The board shall:
 - a. Adopt a seal to be affixed to each certificate of registration issued by the board;
 - b. Issue certificates of registration to qualified applicants; and
 - c. Adopt rules in accordance with chapter 28-32.
4. The secretary-treasurer shall keep a record of the proceedings of the board.

SECTION 6. AMENDMENT. Section 43-03-06 of the North Dakota Century Code is amended and reenacted as follows:

43-03-06. Salary of ~~secretary of board and members of board~~ executive director - Expenses of board. The secretary of the board shall

1. If the board appoints or contracts an executive director, the executive director is entitled to receive such salary as must be fixed by a resolution of the board adopted at a regular meeting, and ~~also shall is~~ entitled to receive such traveling, hotel reimbursement for travel, lodging, and other expenses as are incurred legitimately in the performance of the ~~secretary's~~ executive director's official duties.
2. Each of the ~~other members~~ member of the board ~~shall is~~ entitled to receive ~~twenty-five a~~ per diem of ~~seventy-five~~ dollars for each day or portion thereof of a day spent in the discharge of the member's duties, such mileage as is provided for by section 54-06-09, and ~~must be reimbursed~~ is entitled to reimbursement for the member's actual and necessary expenses incurred in the discharge of the member's official duties.
3. The expenses of the board ~~and its officers~~ at no time may exceed the amount of moneys received and on deposit to the credit of the board under the provisions of this chapter.

SECTION 7. AMENDMENT. Section 43-03-08 of the North Dakota Century Code is amended and reenacted as follows:

43-03-08. Board to adopt rules. The board ~~may~~ shall adopt rules:

1. To govern board proceedings.
2. For the examination of candidates for registration.
3. For the regulation of the practice of architecture and landscape architecture.
4. For education requirements of registration applicants.
5. For ~~continuing education of registrants~~ practical experience requirements of registration applicants.

SECTION 8. AMENDMENT. Section 43-03-09 of the North Dakota Century Code is amended and reenacted as follows:

43-03-09. Unauthorized practice prohibited Prohibited acts - Injunction.

1. A person may not practice architecture in this state unless registered as an architect under this chapter or otherwise authorized by the board. ~~After December 31, 2004, a~~ 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.
2. A person may not fraudulently obtain or furnish a certificate of registration to practice architecture or landscape architecture.
3. A person that is not licensed under this chapter may not:
 - a. Advertise, represent, or in any manner hold that person out as an architect or landscape architect;

- b. In connection with the person's business or name, or otherwise, assume, use, or advertise any term, title, or description or engage in any other conduct that reasonably might be expected to mislead another to believe the person is an architect or landscape architect; or
 - c. Except as a copartnership of architects, engage in the practice of architecture or landscape architecture as a corporation.
4. Through the attorney general, the board may seek to enjoin a person from committing an act in violation of this chapter. The board is not required to prove irreparable injury to enjoin a violation of this chapter.

SECTION 9. AMENDMENT. Section 43-03-10 of the North Dakota Century Code is amended and reenacted as follows:

43-03-10. Regulation of use of ~~terms~~ titles.

1. A person may not use the title or designation "architect", "registered architect", "licensed architect", any variation of those terms, or any other words, letters, or device to indicate that person is an architect authorized to practice architecture in this state unless that person is registered as an architect under this chapter. In a copartnership of architects, each member of the partnership shall hold a certificate of registration to practice.
2. A person may not use the title or designation "landscape architect", "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.
3. This chapter does not authorize a landscape architect to use the title "architect" or to practice architecture.

SECTION 10. 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 an individual may take the examination for registration as an architect or a landscape architect, that individual shall make an application to the board submitting satisfactory evidence of having the required qualifications and shall pay an examination fee of not more than one hundred dollars. If an applicant fails to pass the examination, at the next regularly scheduled examination the applicant may take a partial or entire reexamination is required, the as determined appropriate by the board. An applicant shall pay a reexamination fee of 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 11. 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 or landscape architect:

1. Must be at least eighteen years of age;
 2. Must be of good moral character, with rejection possible on the basis of:
 - 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;
 - b. Misstatement or misrepresentation of fact by the applicant in connection with that individual's application; or
 - c. Violation of any of the standards of conduct required of registrants;
 3. Must have successfully completed an examination for registration;
 4. 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~~ hold a professional degree in architecture from an accredited school of architecture and must have the required practical experience, as established by the board;
 5. In the case of a landscape architect, must hold a professional degree in landscape architecture from an accredited school of landscape architecture and must have the required practical experience, as established by the board; and
- 5- 6. Must satisfy registration criteria adopted by the board.

SECTION 12. AMENDMENT. Section 43-03-14 of the North Dakota Century Code is amended and reenacted as follows:

43-03-14. Examination.

1. ~~Before an applicant may be registered as an architect, the applicant shall pass satisfactorily an examination in such technical and professional courses as are established by the board. The examination must have special reference to the planning, design, and construction of buildings. The examination must cover such subjects and be graded on such basis as outlined by the national council of architectural registration boards.~~
2. Before an applicant may be registered as a landscape architect, the applicant shall pass satisfactorily an examination established by the board.
3. The board may administer an examination or may recognize a board-approved examination of a nationally recognized entity.

SECTION 13. AMENDMENT. Section 43-03-15 of the North Dakota Century Code is amended and reenacted as follows:

43-03-15. When examination not necessary. ~~A The board may admit a nonresident applicant seeking to register to practice architecture or landscape architecture in North Dakota may be admitted to practice if:~~

1. ~~The applicant holds a license in the state where the applicant's office is located; and~~
2. ~~The applicant holds a national council of architectural registration boards certificate, when:~~
 - a. ~~The applicant files an application with the board, containing such information concerning the applicant as the board considers pertinent; and~~
 - b. ~~The board receives from the national council of architectural registration boards a certified copy of the applicant's council record, without requiring the applicant to pass an examination if the applicant is licensed to practice architecture or landscape architecture under the laws of any other state that has requirements substantially equal to those provided for under this chapter. An applicant under this section shall pay the fees provided for under section 43-03-18.~~

SECTION 14. 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 - List of certificate holders. ~~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 secretary-treasurer of the board. The board shall issue a certificate of registration to every individual who passes the examination or otherwise is entitled to receive the certificate. The secretary secretary-treasurer of the board shall maintain a list of architects and landscape architects certified under this section chapter. This list of certificate holders must contain the registrant's each certificate holder's name, current business address, certification number, and the expiration date of the certificate.~~

SECTION 15. 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 An initial certificate of registration as an architect or a landscape architect must be issued for a term established by the board. Upon the payment of the proper fee, a certificate of registration may be renewed without examination expires on June thirtieth of the year following the date of issuance. A renewed certificate of registration is valid for two years.~~

SECTION 16. AMENDMENT. Section 43-03-18 of the North Dakota Century Code is amended and reenacted as follows:

43-03-18. Fees.

1. The following fees apply to architects and landscape architects:

- a. Following examination, ~~an architect a~~ registration fee of not more than ~~one~~ three hundred dollars, as set by the board.
 - b. When examination is not necessary under section 43-03-15, ~~an architect a~~ registration fee of not more than ~~one~~ three hundred dollars, as set by the board.
 - c. ~~An architect A~~ registration renewal fee, which need not be collected annually, but which must be based on no more than ~~one~~ three 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 Fees set by the board under this subsection are not subject to chapter 28-32.~~
 - 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 architects and 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 A certificate holder who fails to pay a special fee assessed by the board under this subsection is subject to the forfeiture provisions under section 43-03-19.
 3. Fees set by the board may not exceed the amount reasonably necessary to regulate the profession professions of architecture and 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 17. 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 fee Renewal - Forfeiture.

1. If ~~the A~~ holder of a certificate of registration as an architect or a landscape architect ~~fails shall apply to renew the certificate and~~ pay the associated renewal fee or a special fee when due, ~~that individual's certificate must be revoked unless that individual's application for renewal is made within one year after the expiration of that individual's certificate. If application for renewal is made within one year, that individual then shall pay the 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 individual's certificate, that individual may, in the board's discretion, be reinstated upon payment of a fee as set by the board. Application for renewal must be accompanied by~~

evidence satisfactory to the board of compliance with this chapter. Failure of a certificate holder to timely renew the certificate and pay the associated renewal fee before the expiration of the certificate results in forfeiture of the certificate.

2. 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. At least two months before the date of the expiration of a certificate of registration, the secretary-treasurer shall notify the certificate holder of the upcoming expiration and at least two weeks before the expiration date the secretary-treasurer shall notify any outstanding certificate holders by certified mail, at the certificate holder's last-known address, of the upcoming expiration and resulting forfeiture.

SECTION 18. AMENDMENT. Section 43-03-20 of the North Dakota Century Code is amended and reenacted as follows:

43-03-20. Revocation, denial, or suspension of registration. If the board revokes, denies, or suspends the certificate of registration or application of a certificate holder or applicant for certificate, the certificate holder or applicant has a right to a hearing before the board on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32 relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. The board, after a hearing upon thirty days' written notice to the certificate holder, may revoke, deny, or suspend any certificate of registration of or application to be an architect or a landscape architect upon proof that:

1. Such ~~The certificate has been~~ was obtained or attempted to be obtained by fraud, deceit, or material misrepresentation of fact in applying for a certificate or renewal of a certificate or in passage of the examination under this chapter;
2. The holder of ~~such the~~ certificate has been guilty of malfeasance, deceit, fraud, gross incompetency, or negligence in connection with the holder's practice of architecture or landscape architecture;
3. The holder of the certificate has exhibited mental incompetency, untrustworthiness, incompetency, or misconduct in the practice of architecture or landscape architecture as evidenced by conduct that endangers life, health, property, or the public welfare.
4. The holder of ~~such the~~ certificate ~~has~~ allowed a nonregistered person to practice as an architect by the device of permitting the certificate 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;
5. The holder of the certificate or applicant had an architecture or a landscape architecture license of another state suspended or revoked or was otherwise disciplined by another state;

- 4- 6. The holder of ~~such the~~ certificate ~~has been~~ or applicant was convicted of an offense determined by the board to have a direct bearing upon the ~~certificate holder's or applicant's~~ ability to serve the public as an architect or landscape architect; or that, following conviction of an offense, the holder ~~or applicant~~ is not sufficiently rehabilitated under section 12.1-33-02.1; or
- 5- 7. The holder of ~~such the~~ certificate ~~has~~ or applicant violated this chapter or rules adopted under this chapter. If a certificate holder or applicant is convicted of a crime in another state which would constitute a violation of this chapter had the criminal action taken place in this state, a copy of the judgment of conviction certified by the rendering court is presumptive evidence of the conviction in any hearing under this section. For purposes of this subsection, a conviction includes a plea of nolo contendere or its equivalent.

SECTION 19. 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~~ require the certificate holder to acquire, at the ~~applicant's~~ certificate holder's expense, a ~~rubber~~ stamp or indicia to be used by the ~~applicant~~ certificate holder in the conduct of the ~~applicant's~~ certificate holder's practice and to be impressed upon drawings, plans, and other documents prepared by the ~~applicant~~ certificate holder. The board shall ~~prescribe~~ adopt rules governing the ~~use~~ technical requirements of such stamp and indicia and ~~applicant's~~ the certificate holder's signature.

SECTION 20. REPEAL. Sections 43-03-12, 43-03-24, and 43-03-25 of the North Dakota Century Code are repealed.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 359

HOUSE BILL NO. 1024

(Legislative Council)
(Administrative Rules Committee)

AN ACT to amend and reenact sections 43-06-18, 43-06-19, 43-10-24, 43-18.1-09, 43-18.2-12, 43-23-17, 43-25-19, 43-33-18, 43-40-18, 43-41-14, 43-42-07, 43-45-08, and 43-48-16 of the North Dakota Century Code, relating to penalty provisions under occupational and professional licensing laws; to repeal section 43-41-13 of the North Dakota Century Code, relating to bribery and false statements in seeking licensure from the board of social work examiners; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-06-18 of the North Dakota Century Code is amended and reenacted as follows:

43-06-18. State's attorney to enforce law. The state's attorney of each county in this state shall enforce ~~the provisions of this chapter~~ section 43-06-19 and prosecute all violations thereof, and the secretary-treasurer of the board, under the direction of the board, shall aid in the enforcement of this chapter.

SECTION 2. AMENDMENT. Section 43-06-19 of the North Dakota Century Code is amended and reenacted as follows:

43-06-19. Penalty. Any person who ~~violates any of the provisions of this chapter, and any person~~ fraudulently procures a license to practice chiropractic or who, without complying with the provisions of this chapter:

1. Practices or attempts to practice chiropractic;
2. Advertises as a chiropractor; or
3. Uses the terms or letters, doctor of chiropractic, chiropractor, D.C., chiropractic physician, or any other title that will induce the belief that the person is engaged in the practice of chiropractic,

is guilty of a class B misdemeanor.

SECTION 3. AMENDMENT. Section 43-10-24 of the North Dakota Century Code is amended and reenacted as follows:

43-10-24. Penalty. Any person ~~willfully violating any of the provisions of sections 43-10-21 through 43-10-23, except rules and regulations promulgated under operating or managing a funeral establishment without a funeral establishment license in violation of section 43-10-22,~~ is guilty of a class B misdemeanor. ~~Any person who willfully violates a rule or regulation promulgated under section 43-10-22 is guilty of an infraction.~~

SECTION 4. AMENDMENT. Section 43-18.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-18.1-09. Violations - Penalty. Any person ~~who willfully that~~ violates ~~any of the provisions of this chapter is guilty of an infraction the state plumbing code adopted under section 43-18-09, violates subsection 1 of section 43-18.1-04, or works under the license of another person in a manner that is in violation of subsection 3 of section 43-18.1-04 is guilty of a class B misdemeanor.~~

SECTION 5. AMENDMENT. Section 43-18.2-12 of the North Dakota Century Code is amended and reenacted as follows:

43-18.2-12. Violation - Penalty. Any person ~~who willfully that~~ violates ~~this chapter is guilty of an infraction the state plumbing code adopted under section 43-18-09, violates section 43-18.2-03, or works under the license of another person in a manner that is in violation of section 43-18.2-06 is guilty of a class B misdemeanor.~~

SECTION 6. AMENDMENT. Section 43-23-17 of the North Dakota Century Code is amended and reenacted as follows:

43-23-17. Penalty. Any person violating ~~any of the provisions of this chapter section 43-23-05 or 43-23-14.1~~ is guilty of an infraction.

SECTION 7. AMENDMENT. Section 43-25-19 of the North Dakota Century Code is amended and reenacted as follows:

43-25-19. Penalty for violation. Any person violating ~~any of the provisions of this chapter section 43-25-03~~ without being exempt under section 43-25-04 is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the board may initiate a civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person.

SECTION 8. AMENDMENT. Section 43-33-18 of the North Dakota Century Code is amended and reenacted as follows:

43-33-18. Violations - Penalty - Injunction. Any person who ~~violates any of the provisions of fits or dispenses hearing instruments without a license or trainee permit as provided in this chapter or who violates section 43-33-13~~ is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person.

SECTION 9. AMENDMENT. Section 43-40-18 of the North Dakota Century Code is amended and reenacted as follows:

43-40-18. Penalty - Injunction. Any person who violates section 43-40-02 ~~and subsection 4 of section 43-40-16~~ is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter.

SECTION 10. AMENDMENT. Section 43-41-14 of the North Dakota Century Code is amended and reenacted as follows:

43-41-14. Penalty. Any person who violates ~~any provision of this chapter subsection 1 of section 43-41-04~~ is guilty of a class B misdemeanor.

SECTION 11. AMENDMENT. Section 43-42-07 of the North Dakota Century Code is amended and reenacted as follows:

43-42-07. Penalty. Any person who ~~violates this chapter or any rules adopted under~~ practices polysomnography or respiratory care in violation of this chapter is guilty of an infraction.

SECTION 12. AMENDMENT. Section 43-45-08 of the North Dakota Century Code is amended and reenacted as follows:

43-45-08. Penalty. Any person who violates ~~this chapter~~ subsection 1 of section 43-45-05.2 is guilty of a class B misdemeanor.

SECTION 13. AMENDMENT. Section 43-48-16 of the North Dakota Century Code is amended and reenacted as follows:

43-48-16. Penalty. Any person who violates ~~any provisions of this chapter~~ section 43-48-02 is guilty of a class B misdemeanor.

SECTION 14. REPEAL. Section 43-41-13 of the North Dakota Century Code is repealed.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 360**HOUSE BILL NO. 1116**

(Government and Veterans Affairs Committee)
(At the request of the State Board of Funeral Service)

AN ACT to create and enact a new section to chapter 43-10 of the North Dakota Century Code, relating to the powers of the state board of funeral service to conduct information seminars; and to amend and reenact subsection 6 of section 43-10-10.1 and sections 43-10-13, 43-10-14, 43-10-15, 43-10-15.1, 43-10-22, and 43-10-23 of the North Dakota Century Code, relating to an exception to the requirement of a license to practice funeral service, licensing of funeral practitioners, and licensing and inspection of funeral establishments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Information seminars. The board may conduct information seminars.

SECTION 2. AMENDMENT. Subsection 6 of section 43-10-10.1 of the North Dakota Century Code is amended and reenacted as follows:

6. This chapter does not prohibit individuals licensed in other states, as embalmers or funeral directors, from assisting a North Dakota licensed embalmer during disasters or special emergencies funeral practitioners.

SECTION 3. AMENDMENT. Section 43-10-13 of the North Dakota Century Code is amended and reenacted as follows:

43-10-13. License - When granted - Fee - Signed by majority of board - Nontransferable - Where displayed. The board shall grant a license to practice funeral service if the applicant:

1. Has the required qualifications;
2. Has passed the required examination; and
3. Has paid to the treasurer of the board a sum of not more than ~~one~~ two hundred dollars, as established by the board.

The license must be signed by a majority of the board, be attested by the board's seal, and specify by name the person to whom it is issued. A license is nonassignable ~~and~~, nontransferable, and must be displayed ~~by the licensee in a conspicuous place in the licensee's office or place of business where it can be observed by the public.~~

SECTION 4. AMENDMENT. Section 43-10-14 of the North Dakota Century Code is amended and reenacted as follows:

43-10-14. License by reciprocity. A licenseholder in good standing in another state maintaining a system and standard of examination equivalent to jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements of this state may be issued a license after passing a written examination on questions concerning laws and rules of this state, upon payment of a fee established by the board, and proof of good moral character.

SECTION 5. AMENDMENT. Section 43-10-15 of the North Dakota Century Code is amended and reenacted as follows:

43-10-15. License - Term - Renewal - Fee for renewal. A license to practice funeral service is valid for ~~one year~~ until the end of the year issued and may be renewed by the board upon the payment to the treasurer of the annual renewal fee before December thirty-first of each year. The amount of the fee may not exceed one hundred dollars. The board may refuse to renew a license for cause.

SECTION 6. AMENDMENT. Section 43-10-15.1 of the North Dakota Century Code is amended and reenacted as follows:

43-10-15.1. Late renewal. A license that has been expired may be renewed at any time within ~~three~~ two years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within thirty days after its expiration, the licensee shall pay a late fee determined by the board not to exceed one hundred fifty dollars. Renewal under this section is effected on the date on which the application is filed, on the date which the renewal fee is paid, or on the date on which the late fee, if any, is paid, whichever last occurs. A license that is not renewed within ~~three~~ two years after its expiration may ~~not~~ be renewed ~~thereafter~~ by filing an application for renewal on a form prescribed by the board, payment of the late fee, and passing the law and rules examination.

SECTION 7. AMENDMENT. Section 43-10-22 of the North Dakota Century Code is amended and reenacted as follows:

43-10-22. Licensure of funeral establishments. A person may not operate or manage a funeral establishment without a funeral establishment license issued by the board for each place of business. Except for on tribal land, a funeral establishment may not be located on tax-exempt property. A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than one hundred dollars, as established by the board. A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of a license with a renewal fee of not more than one hundred ~~twenty-five~~ dollars, as established by the board. A license is valid until the following January first, unless sooner revoked. An application must show that the funeral establishment has complied with all rules adopted by the board in regard to safety and sanitation and will be under the supervision of an individual licensed to practice funeral service. An applicant who has met these standards must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of an estate, the board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which may not exceed two years. The fee for the temporary license is the same as required for regular licenses.

SECTION 8. AMENDMENT. Section 43-10-23 of the North Dakota Century Code is amended and reenacted as follows:

43-10-23. Inspections - Hearings - Revocations - Appeal. The funeral establishment, or that part of a funeral establishment in which is conducted or intended to be conducted any funeral service business, must be open at all times for inspection by the board or the state department of health. The board or agents employed by it and the state department of health may make such inspections as are necessary of facilities and equipment of funeral establishments to ensure compliance with safety and sanitary rules adopted by the board or any other rules or federal regulations pertaining to funeral service whenever either deems the inspection advisable. ~~If, upon inspection, it is found that such rules are not complied with, the board shall notify the holder of the funeral establishment license and hold a hearing.~~ The board may subpoena witnesses, administer oaths, and take testimony. All proceedings under this section must be conducted in accordance with chapter 28-32. The board may, after a hearing, revoke, suspend, or refuse to issue or renew a license upon good cause. A person aggrieved by the action of the board may appeal to the district court of the county in which the person resides or the district court of Burleigh County in accordance with chapter 28-32.

Approved April 30, 2009
Filed May 4, 2009

CHAPTER 361**SENATE BILL NO. 2094**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 43-12.1-04 of the North Dakota Century Code, relating to exempting certain employees at the developmental center at westwood park, Grafton, from the requirements of the Nurse Practices Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-04. Persons exempt from provisions of chapter. This chapter does not apply to a person that is not licensed or registered under this chapter and is:

1. A person that performs nursing interventions in cases of emergency or disaster.
2. A student practicing nursing as a part of an in-state nursing education program.
3. A licensed nurse of another state who is in good standing and who is employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. An individual who performs nursing tasks for a family member.
7. A person that renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person that provides medications, other than by the parenteral route:
 - a. Within a correctional facility, in compliance with section 12-44.1-29;
 - b. Within a psychiatric residential treatment facility for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;

- c. Within a treatment or care center for developmentally disabled persons licensed under chapter 25-16;
 - d. Within a group home, a residential child care facility, or an adult foster care facility licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16; ~~or~~
 - e. Within the developmental center at westwood park, Grafton, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services; or
 - f. Within a human service center licensed under chapter 50-06.
10. A nurse currently licensed to practice nursing by another jurisdiction:
 - a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;
 - b. Who serves as a guest lecturer or short-term consultant; or
 - c. Who provides evaluation undertaken on behalf of an accrediting organization.
 11. An individual, including a feeding assistant, performing nonhands-on tasks while employed in a medicare-funded organization.
 12. 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.

Approved March 18, 2009
Filed March 19, 2009

CHAPTER 362**HOUSE BILL NO. 1269**

(Representatives Kreidt, Pollert, Weisz, Wieland)
(Senators Fischer, J. Lee)

AN ACT to create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; to amend and reenact section 43-12.1-14 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-14 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-14. Grounds for discipline - Penalties. The board may deny, limit, revoke, encumber, or suspend any license or registration to practice nursing issued by the board or applied for in accordance with this chapter; reprimand, place on probation, or otherwise discipline a licensee, registrant, or applicant; deny admission to licensure or registration examination; provide an alternative to discipline in situations involving impairments of chemical dependency or psychiatric or physical disorders; ~~or~~ require evidence of evaluation and treatment; or issue a nondisciplinary letter of concern to a licensee, registrant, or applicant, upon proof that the person:

1. Has been arrested, charged, or convicted by a court, or has entered a plea of nolo contendere to a crime in any jurisdiction that relates adversely to the practice of nursing and the licensee or registrant has not demonstrated sufficient rehabilitation under section 12.1-33-02.1;
2. Has been disciplined by a board of nursing in another jurisdiction, or has had a license or registration to practice nursing or to assist in the practice of nursing or to practice in another health care occupation or profession denied, revoked, suspended, or otherwise sanctioned;
3. Has engaged in any practice inconsistent with the standards of nursing practice;
4. Has obtained or attempted to obtain by fraud or deceit a license or registration to practice nursing, or has submitted to the board any information that is fraudulent, deceitful, or false;
5. Has engaged in a pattern of practice or other behavior that demonstrates professional misconduct;
6. Has diverted or attempted to divert supplies, equipment, drugs, or controlled substances for personal use or unauthorized use;
7. Has practiced nursing or assisted in the practice of nursing in this state without a current license or registration or as otherwise prohibited by this chapter;

8. Has failed to report any violation of this chapter or rules adopted under this chapter; or
9. Has failed to observe and follow the duly adopted standards, policies, directives, and orders of the board, or has violated any other provision of this chapter.

SECTION 2. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Unlicensed assistive person - Practice without a registration. If the board determines an unlicensed assistive person, whose registration has expired, violated subsection 7 of section 43-12.1-14 by practicing without a current registration for a period of up to four months from the initial date of employment, the action of the board in the case of a first violation is limited to the issuance of a letter of concern.

SECTION 3. LEGISLATIVE COUNCIL STUDY. During the 2009-10 interim, the legislative council shall study any steps necessary to enable the state department of health to administer the registry for certified nurse assistants, nurse assistants, and unlicensed assistive persons, and examine the possibility of one registry and a potential location for that registry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009

Filed April 29, 2009

CHAPTER 363**SENATE BILL NO. 2227**

(Senators Stenehjem, O'Connell)
(Representatives Boucher, Carlson)
(At the request of the Governor)

AN ACT to amend and reenact subsections 5 and 6 of section 43-12.2-01 and subsection 3 of section 43-12.2-03 of the North Dakota Century Code, relating to the medical loan repayment program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5 and 6 of section 43-12.2-01 of the North Dakota Century Code are amended and reenacted as follows:

5. Each recipient is limited to a ~~ten~~ thirty thousand dollar maximum loan repayment to be paid over two years.
6. The state health council ~~shall~~ may select ~~up to five~~ any number of recipients ~~in five and~~ communities each year as participants in the program subject to the availability of funding.

SECTION 2. AMENDMENT. Subsection 3 of section 43-12.2-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A nurse practitioner, physician assistant, or certified nurse midwife who receives loan repayment under this chapter:
 - a. Must be a graduate of an accredited program, located in the United States or Canada, for the preparation of nurse practitioners, physician assistants, or certified nurse midwives;
 - b. Must be enrolled in or have graduated from an accredited training program for nurse practitioners, physician assistants, or certified nurse midwives prior to or within one year after submitting an application to participate in the loan repayment program and may not have practiced full time as a nurse practitioner, physician assistant, or certified nurse midwife in this state ~~within three years~~ for more than one year before the date of the application;
 - c. Must be licensed or registered to practice as a nurse practitioner, physician assistant, or certified nurse midwife in this state;
 - d. Shall submit an application to participate in the loan repayment program; and
 - e. Must have entered into an agreement with a selected community to provide full-time services for a minimum of two years at the selected community if the applicant receives a loan repayment program contract.

SECTION 3. APPROPRIATION - COMMUNITY HEALTH TRUST FUND.

There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$67,500, or so much of the sum as may be necessary, to the state department of health for the purpose of providing funding for the medical loan repayment program, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 22, 2009

Filed April 23, 2009

CHAPTER 364**SENATE BILL NO. 2164**

(Senators Flakoll, Andrist)

(Representatives Delmore, Karls, Nathe, Porter)

AN ACT to amend and reenact subsection 4 of section 43-13-01 and section 43-13-13.2 of the North Dakota Century Code, relating to optometrists dispensing therapeutic pharmaceutical agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-13-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Pharmaceutical agent" means diagnostic pharmaceutical agents or therapeutic pharmaceutical agents. The term includes nonscheduled pharmaceutical agents, except for acetaminophen with thirty milligrams of codeine, that have documented use in the treatment of ocular-related disorders or diseases. As used in this subsection:
 - a. "Diagnostic pharmaceutical agents" means pharmaceutical agents administered for the evaluation and diagnosis of disorders of the human eye including anesthetics, mydriatics, myotics, cycloplegics, diagnostic dyes, diagnostic stains, and pharmaceutical agents to evaluate abnormal pupil responses.
 - b. "Therapeutic pharmaceutical agents" includes topically administered and prescribed pharmaceutical agents for treatment of ocular-related disorders or disease, locally administered pharmaceutical agents for primary eye care procedures, oral anti-infective agents, oral antihistaminic agents, and oral analgesics for the treatment of ocular-related disorders or diseases. ~~The dispensing of therapeutic pharmaceutical agents is not permitted under this chapter.~~

SECTION 2. AMENDMENT. Section 43-13-13.2 of the North Dakota Century Code is amended and reenacted as follows:

43-13-13.2. Practice of optometry - Certification requirements - Notification.

1. Any person engaged in visual training procedures or who employs or prescribes lenses, prisms, filters, ophthalmic instruments, or combinations thereof, held either in contact with the eye, or in frames or mounting, to aid, relieve, or correct any visual or ocular anomaly, or holds out as being able to do so, is deemed to be engaged in the practice of optometry.
2. Before any optometrist may prescribe and administer pharmaceutical agents in the treatment and management of ocular diseases, the optometrist must first be certified or qualify for certification in the use of diagnostic pharmaceutical agents. For additional certification to

prescribe and administer pharmaceutical agents in the treatment and management of ocular disease, the board shall require at least seventy-six hours of didactic instruction and twenty-four hours of clinical application of pharmaceutical agents for the treatment and management of ocular diseases. The course for therapeutic certification must be provided by an institution accredited by a regional or professional accrediting organization that is recognized and approved by the United States department of education or the council on postsecondary accreditation.

3. An optometrist may not dispense therapeutic pharmaceutical agents, except an optometrist may:
 - a. Provide a patient a drug sample at no cost to the patient; or
 - b. Sell contact lenses or ophthalmic devices that are classified by the federal food and drug administration as a drug.
4. The board shall provide the board of pharmacy upon request a list of licensed optometrists certified in the use of pharmaceutical agents.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 365**SENATE BILL NO. 2039**

(Legislative Council)
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact sections 43-15-03, 43-15-12, 43-15-25, and 43-15-26 of the North Dakota Century Code, relating to the board of pharmacy, the North Dakota pharmaceutical association, and pharmacist license fees; and to repeal sections 43-15-13.1, 43-15-13.2, 43-15-13.3, 43-15-13.4, 43-15-13.5, 43-15-13.6, and 43-15-30 of the North Dakota Century Code, relating to membership in the North Dakota pharmaceutical association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-03 of the North Dakota Century Code is amended and reenacted as follows:

43-15-03. Board of pharmacy - Appointment - Qualifications. The state board of pharmacy ~~shall consist~~ consists of ~~five~~ seven members appointed by the governor ~~upon the recommendation of the North Dakota pharmaceutical association.~~ The persons appointed Five members of the board must be licensed pharmacists and members of such association, one member must be a registered pharmacy technician, and one member must represent the public and may not be affiliated with any group or profession that provides or regulates any type of health care.

SECTION 2. AMENDMENT. Section 43-15-12 of the North Dakota Century Code is amended and reenacted as follows:

43-15-12. State board of pharmacy - Report. The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. ~~The board shall submit an annual report to the North Dakota pharmaceutical association rendering an account of all moneys received and disbursed by it.~~

SECTION 3. AMENDMENT. Section 43-15-25 of the North Dakota Century Code is amended and reenacted as follows:

43-15-25. Term of license - Renewal - Fee - Where displayed. The license issued by the board to a pharmacist under ~~the provisions~~ of this chapter, and the registration thereof, ~~shall entitle~~ entitles the holder to act in the capacity therein stated for one year unless duly canceled, suspended, or revoked. Every licensee who desires to retain a license, on or before the first day of March in each year, shall pay to the secretary of the board a renewal fee in an amount to be fixed by the board not to exceed ~~two~~ one hundred dollars. Upon payment of the fee, ~~the board shall issue~~ a renewal license ~~must be issued.~~ The license and renewal must be displayed in a conspicuous place in the pharmacy and drugstore where the holder is employed. After a licensee has held licenses duly issued over a period of fifty consecutive years, the secretary of the board may issue the licensee a lifetime license ~~which will entitle~~ that entitles the licensee to act in the capacity of pharmacist thereafter without further payment unless ~~such~~ the license is canceled, revoked, or suspended.

SECTION 4. AMENDMENT. Section 43-15-26 of the North Dakota Century Code is amended and reenacted as follows:

43-15-26. Failure to renew license - Renewal fee - Cancellation of license - Reinstatement. If a licensed pharmacist in this state fails to pay the fee for a renewal of a license within the time required, the secretary of the board shall mail the pharmacist a notice, addressed to the pharmacist's last-known place of residence, notifying the pharmacist of failure to obtain a renewal license. The delinquent licenseholder, within sixty days after the notice is mailed, may procure a renewal license upon the payment of a renewal fee to be set by the board not to exceed ~~two~~ one hundred dollars. If the licenseholder fails to have a license renewed within sixty days after the notice is mailed, the original or renewal license, as the case may be, ~~shall become~~ becomes void and the registry thereof ~~shall~~ must be canceled. The board, on application of the delinquent licenseholder and upon the payment of all unpaid fees, may authorize the issuance of a new license without examination, if it is satisfied that the applicant is a proper ~~person~~ individual to receive the same.

SECTION 5. REPEAL. Sections 43-15-13.1, 43-15-13.2, 43-15-13.3, 43-15-13.4, 43-15-13.5, 43-15-13.6, and 43-15-30 of the North Dakota Century Code are repealed.

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 366**HOUSE BILL NO. 1091**

(Human Services Committee)

(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact sections 43-15-25.1 and 43-15-31.3 of the North Dakota Century Code, relating to continuing education for pharmacists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-25.1 of the North Dakota Century Code is amended and reenacted as follows:

43-15-25.1. Continuing pharmaceutical education.

1. The legislative assembly makes the following findings and declarations: Each pharmacist shall complete at least fifteen hours of approved continuing pharmaceutical education every year as a condition of renewal of a certificate of licensure as a pharmacist in this state.
 - a. Because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain professional competency and improve professional skills.
 - b. To assure the continued competency of the pharmacist and to maintain uniform qualifications for licensure in the profession for the protection of the health and welfare of its citizens, the legislative assembly of North Dakota deems it in the public interest to adopt a continuous professional education program.
2. Commencing March 1, 1987, no ~~An~~ annual renewal of a license may not be issued to a pharmacist until ~~such~~ the pharmacist has satisfactorily completed an accredited program of continuing professional education, all of which may be home self-study, during the previous ~~two years~~ year to help assure the pharmacist's continued competence to engage in the practice of pharmacy. The board from time to time shall determine the amount of continuing education to be required, not to exceed ~~thirty~~ fifteen hours in each ~~biennium~~ annual period. Upon request of the board, proof of compliance shall be furnished to the board.
3. The board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section, which shall include the methods of determining accredited programs, methods of determining compliancy, any fees, and such other rules consistent with this section as the board shall determine. This section and all rules adopted hereunder shall be uniformly applied by the board.

SECTION 2. AMENDMENT. Section 43-15-31.3 of the North Dakota Century Code is amended and reenacted as follows:

43-15-31.3. Oral transmission of prescriptions. An oral transmission of a prescription drug may be accepted and dispensed by a pharmacist or licensed pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the prescription, or a registered dental hygienist or a registered dental assistant who is authorized by the supervising dentist to orally transmit the prescription. The practitioner shall document the order for oral transmission in the patient's records. Only a licensed pharmacist or a licensed pharmacist intern or a registered pharmacy technician may receive an orally transmitted new or refill prescription.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 367**SENATE BILL NO. 2180**

(Senators Warner, J. Lee)

(Representatives Glassheim, N. Johnson)

AN ACT to amend and reenact section 43-17-02.1 of the North Dakota Century Code, relating to limitation on prescribing drugs by physician assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.1. Physician assistant - Limitations on prescribing drugs. A physician assistant may prescribe medications as delegated to do so by a supervising physician. This may include schedule III through V controlled substances; ~~however, a physician assistant may not prescribe schedule II controlled substances.~~ A physician assistant who is a delegated prescriber of controlled substances must register with the federal drug enforcement administration.

Approved March 19, 2009

Filed March 19, 2009

CHAPTER 368**SENATE BILL NO. 2268**

(Senators Nodland, Wanzek)
(Representatives Kasper, N. Johnson)

AN ACT to create and enact a new section to chapter 43-19.1 of the North Dakota Century Code, relating to recognition of retired status for engineers; to amend and reenact sections 43-19.1-02, 43-19.1-03, 43-19.1-04, 43-19.1-05, 43-19.1-07, 43-19.1-08, 43-19.1-09, 43-19.1-10, 43-19.1-11, 43-19.1-12, 43-19.1-12.1, 43-19.1-13, 43-19.1-14, 43-19.1-15, 43-19.1-16, 43-19.1-16.1, 43-19.1-17, 43-19.1-18, 43-19.1-19, 43-19.1-20, 43-19.1-21, 43-19.1-22, 43-19.1-23, 43-19.1-24, 43-19.1-25, 43-19.1-26, 43-19.1-27, 43-19.1-29, 43-19.1-30, 43-19.1-31, and 43-19.1-33 of the North Dakota Century Code, relating to the regulation of professional engineers and professional land surveyors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-02. Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "Board" means the state board of registration for professional engineers and land surveyors ~~hereinafter provided by this chapter.~~
2. "Engineer" means a professional engineer; ~~as defined in subsection 8.~~
3. "~~Engineer-in-training~~ Engineer intern" means ~~a person an individual~~ who complies with the requirements for education, experience, and character; and who has passed an examination in the fundamental engineering subjects, as provided in sections 43-19.1-12 and 43-19.1-15.
4. "Land surveying" means any service comprising the determination of the location of land boundaries and land boundary corners; incidental topography; the preparation of maps showing the shape and area of tracts of land and their subdivision into smaller tracts; the preparation of maps showing the layouts of roads, streets, and rights of way of same to give access to smaller tracts; and the preparation of official plats or maps of land within this state.
5. "Land surveyor" means ~~any person~~ an individual engaged in the practice of land surveying.
6. "~~Land surveyor-in-training~~ surveyor intern" means ~~a person an individual~~ who complies with the requirements for education, experience, and character; and who has passed an examination in the fundamentals of mathematics and the basic principles of land surveying as required in this chapter and as established by the board.

7. "Practice of engineering and practice of professional engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects as are incidental to the practice of engineering. A person must be construed to practice or offer to practice engineering; ~~within the meaning and intent of this chapter, who if the person practices any branch of the profession of engineering; or who if the person,~~ by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is an engineer; ~~or and is able to practice engineering in this state if the person~~ through the use of some other title implies that the person is an engineer or that the person is registered under this chapter; or ~~who if the person~~ holds out as able to perform, or ~~who~~ does perform any engineering service or work or any other service ~~which that~~ is recognized as engineering, for a valuable consideration for others, including the public at large; ~~but. The practice of engineering does not mean or include the practice of engineering by persons a person~~ exempt under the provisions of section 43-19.1-29, nor the work ordinarily performed by ~~persons who operate a person that operates or maintain maintains~~ machinery or equipment. Notwithstanding the foregoing provisions, a person may not be construed to practice engineering unless that person offers engineering services to, or performs such engineering for, the public.
8. "Professional engineer" means ~~a person~~ an individual who, by reason of special knowledge or use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been ~~duly~~ registered and licensed by the state board of registration for professional engineers and land surveyors.
9. "Professional land surveyor" means a land surveyor who complies with the requirements for education, experience, and character and who has been registered and licensed by the board.
10. "Responsible charge" means direct control and personal supervision of engineering or surveying work.
- ~~40.~~ 11. "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.
- ~~44.~~ 12. "The practice or offer to practice surveying" includes the engagement of any person in land surveying or the representation by any person by verbal claim, sign, letterhead, card, or in any other manner, that such

person is a land surveyor and is able to perform land surveying in this state.

SECTION 2. AMENDMENT. Section 43-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-03. Board - Appointments - Terms. A state board of registration for professional engineers and land surveyors is hereby created ~~whose~~ the duty of which is to administer the provisions of this chapter. The board consists of one professional land surveyor and four professional engineers ~~who.~~ The board members who are professional engineers must be appointed by the governor from among a list of nominees submitted to the governor by the North Dakota society of professional engineers who must have the qualifications required by section 43-19.1-04, such list ~~to contain~~ must include the names of at least three times the number of nominees as there are vacancies for each vacancy to be filled and one professional land surveyor. The governor shall appoint the professional land surveyor member of the board from a list of nominees submitted by the North Dakota society of professional land surveyors. The list must include the names of at least three nominees for the vacancy to be filled. The members must possess the qualifications required by section 43-19.1-04. The members of the board must be appointed for five-year terms ~~which~~ that are staggered so the term of one member expires June thirtieth of each year. ~~The first professional land surveyor on the board must be appointed for a five-year term beginning July 1, 1984.~~ Existing board members shall serve until their term expires. Each member of the board shall receive a certificate of appointment from the governor and shall file with the secretary of state a written oath or affirmation for the faithful discharge of the member's official duties. On the expiration of the term of any member, the governor shall appoint for a term of five years a board member having the qualifications required in section 43-19.1-04 to take the place of the member whose term on the board is about to expire. A member may be reappointed. Each member shall hold office until the expiration of the term for which appointed or until a successor has been duly appointed and has qualified.

SECTION 3. AMENDMENT. Section 43-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-04. Board - Qualifications. Each ~~of the~~ professional engineer board ~~members~~ member must be a professional engineer; who is a citizen and resident of this state, has been registered in this state a minimum of eight years, has been engaged in the lawful practice of engineering for at least twelve years, and ~~who~~ has had responsible charge of important engineering work for at least five years ~~and~~ the. Each professional land surveyor board member must be a registered professional land surveyor; who is a citizen and resident of this state ~~who,~~ has been registered as a professional land surveyor in this state a minimum of eight years, ~~and~~ has been responsible for important land surveying work for at least five years.

SECTION 4. AMENDMENT. Section 43-19.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-05. Board - Compensation and expenses. Each member of the board ~~shall~~ is entitled to receive the sum of twenty-five dollars per diem, in an amount established by the board which may not exceed one hundred thirty-five dollars, when attending to the work of the board or any of ~~its~~ the board's committees and for the time spent in necessary travel; and; ~~in addition thereto, must~~ is entitled to be reimbursed for all actual traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

SECTION 5. AMENDMENT. Section 43-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-07. Board - Organization and meetings. The board shall hold at least two regular meetings each year. ~~Special meetings may be held as the bylaws of the board provide.~~ The board shall elect or appoint annually the following officers: a chairman, a vice chairman, and a secretary. A quorum of the board consists of not less fewer than three members.

SECTION 6. AMENDMENT. Section 43-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-08. Board - Powers. The board ~~has the following powers~~ may:

1. ~~To adopt~~ Adopt and amend all bylaws, rules of procedure, and regulations to administer and carry out the provisions of this chapter and for the conduct of ~~its~~ the board's affairs and functions ~~not inconsistent with the constitution and laws of this state or this chapter,~~ which may be reasonably necessary for the proper performance of ~~its~~ the board's duties and the regulation of ~~its~~ the board's proceedings, meetings, records, and examinations; and the conduct thereof, and to adopt ~~and promulgate~~ a code of ethics ~~which shall~~ that must be binding upon all persons registered under or subject to this chapter.
2. ~~To adopt~~ Adopt and have an official seal, which must be affixed to each certificate issued.
3. ~~To employ~~ Employ such clerks, technical experts, and attorneys as ~~it may deem~~ the board determines necessary or desirable to carry out ~~the provisions of~~ this chapter.
4. ~~To hold~~ Hold hearings, administer oaths, and take and record testimony, ~~and~~; under the hand of ~~its~~ the board's chairman and the seal of the board, subpoena witnesses and compel ~~their~~ the witnesses' attendance; ~~and to~~ require the submission of books, papers, documents, or other pertinent data in any disciplinary matters, or in any case when a violation of this chapter or of the rules or regulations ~~promulgated~~ adopted by the board is alleged; and ~~to~~ make findings, orders, and determinations ~~which that~~ which that have the force and effect of law; which are subject to review by the courts of this state in the manner provided by chapter 28-32. Upon failure or refusal of any person to comply with any such order of the board; or to honor ~~its~~ the board's subpoena, the board may apply to a court of any jurisdiction to enforce compliance with ~~same~~ the order or subpoena.
5. ~~To apply~~ Apply in the name of the state for relief by injunction, without bond, to enforce the provisions of this chapter; or to restrain any violation ~~thereof of this chapter.~~ In such proceedings, it is not necessary to allege or prove, either that an adequate remedy at law does not exist; or that substantial or irreparable damage would result from the continued violation thereof. The members of the board are not personally liable under this proceeding.

SECTION 7. AMENDMENT. Section 43-19.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-09. Receipts and disbursements. The secretary of the board shall receive and account for all moneys derived under the provisions of this chapter, and shall deposit and disburse the ~~same money derived under this chapter~~ in accordance with section 54-44-12. The secretary shall give a surety bond to the state in such sum as may be required by the board. The premium on ~~said~~ the bond ~~must be regarded as~~ is a proper and necessary expense of the board. The secretary shall receive such salary as the board shall determine. The board shall employ ~~such~~ clerical or other assistants as are necessary for the proper performance of ~~its~~ the board's work, and shall make expenditures of this fund for any purpose ~~which, in the opinion of the board, determines~~ is reasonably necessary for the proper performance of ~~its~~ the board's duties under this chapter, including ~~but not limited to,~~ the expenses of the board's delegates to meetings of, and membership fees to, the national council of ~~state boards of engineering~~ examiners for engineering and surveying and any of ~~its~~ the organization's subdivisions. Under no circumstances may the total amount of warrants issued in payment of the expenses and compensation provided for in this chapter exceed the amount of moneys collected.

SECTION 8. AMENDMENT. Section 43-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-10. Records and reports. The board shall:

1. Keep a record of ~~its~~ the board's proceedings and of all applications for registration, ~~which.~~ The record must show the name, age, and last-known address of each applicant; the date of application, the place of business of such applicant, the applicant's education, experience, and other qualifications; type of examination required; whether ~~or not~~ the applicant was rejected; whether ~~or not~~ a certificate of registration was granted; the date of the action of the board; and such other information as may be deemed necessary by the board; ~~which.~~ The record of the board is prima facie evidence of the proceeding of the board and a transcript thereof, ~~duly~~ of board proceedings which is certified by the secretary under seal, is admissible as evidence with the same force and effect as if the original were produced.
2. Annually, ~~as of January first in compliance with state law,~~ submit ~~to the governor~~ a report of ~~its~~ the board's transactions of the preceding year, ~~and shall transmit to the governor a complete statement of the receipts and expenditures of the board, attested by affidavits of its chairman and its secretary.~~

SECTION 9. AMENDMENT. Section 43-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-11. Roster. A complete roster showing the names and last-known addresses of all ~~registered~~ professional engineers and ~~registered~~ land surveyors must be ~~published~~ made available by the secretary of the board at intervals as established by board regulations. Copies of this roster must be ~~mailed~~ made available to each ~~person so registered,~~ placed on file with the secretary of state registrant and all county auditors and city auditors and may be distributed or sold to the public.

SECTION 10. AMENDMENT. Section 43-19.1-12 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-12. General requirements for registration. To be eligible for registration as a professional engineer or land surveyor, or for certification as an ~~engineer-in-training engineer intern~~ or land ~~surveyor-in-training surveyor intern~~, an applicant must be of good character and reputation and shall submit a written application to the board containing such information as the board may require together with five references, three of which references must be ~~registered~~ registered professional engineers in the case of engineers, or three of which references must be ~~registered~~ registered professional land surveyors in the case of land surveyors, having personal knowledge of the applicant's engineering or land surveying experience, or in the case of an application for certification as an ~~engineer-in-training engineer intern~~ or land ~~surveyor-in-training surveyor intern~~, by three character references.

SECTION 11. AMENDMENT. Section 43-19.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-12.1. Conviction not bar to registration - Exceptions. Conviction of an offense does not disqualify a ~~person~~ an individual from registration under this chapter unless the board determines that the offense has a direct bearing upon a ~~person's~~ an individual's ability to serve the public as an engineer ~~and~~ or land surveyor, or that, following conviction of any offense, the ~~person~~ individual is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 12. AMENDMENT. Section 43-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-13. Registration without examination - Professional engineers. An applicant otherwise qualified must be admitted to registration as a professional engineer without examination if the applicant is:

1. A ~~person~~ An individual holding a certificate of registration to engage in the practice of engineering, on the basis of comparable qualifications, issued to that ~~person~~ applicant by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country and who, in the opinion of the board, based upon verified evidence, meets the requirements of this chapter; or
2. A ~~person~~ holding a certificate of qualification issued by the national bureau of engineering registration, who in the opinion of the board meets the requirements of this chapter; or
3. ~~Any person~~ An individual registered as a professional engineer by the state of North Dakota under ~~the provisions~~ of chapter 43-19, on the thirtieth day of June 1967.

SECTION 13. AMENDMENT. Section 43-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-14. Registration with examination - Professional engineers. An applicant otherwise qualified must be admitted to registration as a professional engineer, if the applicant has successfully passed a written examination of ~~not less than~~ at least eight hours in the principles and practice of engineering, as prescribed by the board, and has one of the following additional qualifications:

1. Is a graduate of an engineering curriculum of four years or more an engineer intern with a baccalaureate degree in engineering from an institution offering accredited programs approved by the board as being

- of satisfactory standing, ~~and with who has~~ a specific record of an additional four years or more of experience in engineering work of a grade and character which indicates to the board that the applicant may be competent to practice engineering; ~~and who holds a valid engineer-in-training certificate.~~
2. Is a ~~person who has satisfactorily completed a four-year engineering curriculum not an engineer intern with a baccalaureate degree in engineering from a program that is not accredited but is approved by the board, and who has 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 holds a valid engineer-in-training certificate.~~
 3. Is a ~~person~~ an engineer intern 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 that~~ indicates to the board that the applicant is competent to practice engineering, and who holds a valid ~~engineer-in-training~~ engineer intern certificate as of July 1, 2004.
 4. Is a ~~person with experience of not less than four years as an engineer intern who meets one of the educational requirements listed in subsection 1, 2, or 5, who has been a teacher of engineering in a college or university offering an approved engineering curriculum of four years or more, and who has had a minimum of two years of practical nonteaching engineering experience which that is of a character and grade which that~~ indicates to the board that the applicant is competent to practice engineering.
 5. Is a ~~person who has satisfactorily completed a four-year or more an~~ engineer intern with a baccalaureate degree in an engineering-related curriculum and program, who has at least 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 14. AMENDMENT. Section 43-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-15. Additional qualifications of ~~engineers-in-training~~ engineer interns. Except in the case of a ~~person~~ an individual who has filed an application ~~prior to~~ before July 1, 1967, and any subsequent reapplication by such ~~person~~ individual, an applicant otherwise qualified must be admitted to certification as an ~~engineer-in-training which certification is valid for a period of twelve years, if the applicant is a person~~ engineer intern. An engineer intern is an individual who ~~is~~ has:

1. A ~~graduate of an approved engineering curriculum of four years or more baccalaureate degree in engineering from an institution that offers accredited programs approved by the board and has passed the board's written examination of not less than at least~~ at least eight hours in the fundamentals of engineering shall be certified or enrolled as an ~~engineer-in-training~~ engineer intern.

2. ~~An applicant who has satisfactorily completed a four year engineering curriculum other than the ones A baccalaureate degree in engineering from a program that is not accredited but is approved by the board and, who has a specific record of at least four 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 at least eight hours in the fundamentals of engineering.~~
3. ~~An applicant who has satisfactorily completed a four year A baccalaureate degree in an engineering-related curriculum and program, who has a specific record of at least 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 at least eight hours in the fundamentals of engineering.~~

SECTION 15. AMENDMENT. Section 43-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-16. Registration - Land Professional land surveyor. Any person individual who shows, to the satisfaction of the board, that the person individual is otherwise qualified and is over the age of eighteen years is eligible for registration as a professional land surveyor, if the person is individual:

1. A person holding Holds a certificate of registration to engage in the practice of land surveying issued on the basis of a minimum sixteen-hour written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown by the person's individual's application; which, in the opinion of the board, are equal to or higher than the requirements of this chapter;
2. A graduate from an accredited engineering or surveying curriculum of four years or more, Has a baccalaureate degree in engineering or surveying from an institution that offers accredited programs approved by the board, followed by at least four years of land surveying experience; of a character satisfactory to the board; and, who has passed a written examination of not less than at least sixteen hours designed to show that the person individual is qualified to practice land surveying;
3. A person having Has at least eight years or more of active experience in land surveying; of a character satisfactory to the board, and who has passed a written examination of not less than at least sixteen hours designed to show that the person individual is qualified to practice land surveying; or
4. A person is registered as a land surveyor by the state of North Dakota, under the provisions of former chapter 43-24, on the thirtieth day of June 1967.

SECTION 16. AMENDMENT. Section 43-19.1-16.1 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-16.1. Qualifications of land surveyors-in-training surveyor interns. An applicant for certification as a land ~~surveyor-in-training~~ surveyor intern who has ~~had a minimum of~~ at least four years of qualifying land surveying

experience of a character satisfactory to the board, of which a formal education in an accredited engineering or land surveying curriculum may constitute a part thereof, may receive from the board, upon passing a written examination on the fundamentals of mathematics and the basic principles of land surveying, a certificate stating that the applicant has passed the examination and been recorded as a land surveyor-in-training surveyor intern.

SECTION 17. AMENDMENT. Section 43-19.1-17 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-17. Application for registration. Application for registration as a professional engineer or land surveyor, ~~and or~~ for certification as an ~~engineer-in-training engineer intern~~ or land ~~surveyor-in-training, surveyor intern~~ must be on a form prescribed and furnished by the board containing statements made under oath, showing the applicant's education ~~and~~, a detailed summary of the applicant's technical experience, and references as required by this chapter and must be accompanied by registration fees.

SECTION 18. 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, ~~engineer interns~~, and land ~~surveyors-in-training surveyor interns~~ 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 one hundred dollars for a one-year period or 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 19. AMENDMENT. Section 43-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-19. Examinations. Written examinations must be held at such times and places as the board shall determine. Examinations required on fundamental engineering or land surveying 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 engineering or land surveying experience as provided in this chapter. The board shall establish the minimum 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 ~~in an amount not in excess of the regularly established registration fee.~~ Any candidate for registration having an average grade of ~~less than fifty percent that does not meet the standards set by the board~~ may not apply for reexamination for one year from the date of such examination.

SECTION 20. AMENDMENT. Section 43-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-20. Certificates. The board shall issue a certificate of registration upon payment of the registration fee as provided for in this chapter to any applicant who, in the opinion of the board, has met the requirements of this chapter. Enrollment cards must be issued to those who qualify as ~~engineers-in-training and engineer interns~~ or land ~~surveyors-in-training surveyor interns~~. Certificates of registration must carry the designation "professional engineer" or "professional land surveyor", must show the full name of the registrant without any titles, must be numbered, and must be signed by the chairman and the secretary under seal of the

board. The issuance of a certificate of registration by the board is prima facie evidence ~~that the person~~ individual named on the certificate is entitled to all rights and privileges of a professional engineer or land surveyor during the term of which the certificate providing the same has not been revoked or suspended.

SECTION 21. AMENDMENT. Section 43-19.1-21 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-21. Seals. Each registrant ~~hereunder may~~ under this chapter upon registration may obtain a seal of the design authorized by the board, bearing the registrant's name, ~~serial~~ registration number, and the legend; "registered professional engineer" or "registered professional land surveyor". Final engineering drawings, specifications, maps, plats, reports, or other documents prepared by a person required to be registered under this chapter must, when issued presented to a client, contractor, subconsultant, or any public agency, must be signed, dated, and stamped with the said seal or facsimile thereof of the seal. A working drawing or unfinished document must contain a statement to the effect the drawing or document is preliminary and not for construction, recording purposes, or implementation. It is unlawful for a registrant to affix or permit the registrant's seal and signature or facsimiles thereof to be affixed to any engineering drawings, specifications, maps, plats, reports, or other documents after the expiration or revocation or during the suspension of a certificate, or for the purpose of aiding and abetting any other person to evade or attempt to evade any provision of this chapter.

SECTION 22. AMENDMENT. Section 43-19.1-22 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-22. Expirations and renewals. ~~Certificates~~ A certificate of registration ~~expire~~ expires on December thirty-first of the year of ~~their~~ issuance if registration is on an annual basis and of the year after ~~their~~ issuance if issued on a biennial basis; and ~~become~~ becomes invalid after that date unless renewed. The secretary of the board shall notify every ~~person registered~~ registrant under this chapter of the date of the expiration of ~~that person's~~ the registrant's certificate of registration and the amount of fee required for its renewal. The notice must be mailed to the registrant at the registrant's last-known address at least one month in advance of the expiration of the registrant's certificate. Renewal may be effected at any time before or during the month of December by the payment of a fee as established by the board, not to exceed the fees established in section 43-19.1-18. Renewal of an expired certificate may be effected under rules adopted by the board regarding requirements for reexamination and penalty fees.

SECTION 23. AMENDMENT. Section 43-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-23. Reissuance of certificates. A new certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the board. A ~~The board may establish~~ a reasonable charge ~~must be made~~ for such issuance.

SECTION 24. AMENDMENT. Section 43-19.1-24 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-24. Code of ethics. The board shall cause to have prepared and shall adopt a code of ethics, a copy of which must be ~~delivered~~ made available to every registrant and applicant for registration under this chapter, and which must be published in the roster provided ~~for herein~~ under this chapter. Such publication

constitutes due notice to all registrants. The board may revise and amend this code of ethics from time to time, and shall ~~forthwith~~ notify each registrant in writing of such revisions or amendments. ~~Such~~ The code of ethics ~~when adopted~~ applies to all certificate holders, including specialists in a particular branch of the engineering or surveying profession.

SECTION 25. 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~~ may suspend, refuse to renew, or revoke the certificate of registration of, ~~or and may~~ 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~~ the board's 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~~ an individual'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~~ an individual 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.

SECTION 26. AMENDMENT. Section 43-19.1-26 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-26. Disciplinary action - Procedure. Any person may ~~prefer~~ file charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against any individual registrant. Such charges must be in writing and must be sworn to by ~~the each person or persons~~ making ~~them~~ the charges and must be filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within ~~three~~ six months ~~after the date on which they have been preferred~~ following the filing of charges unless the accused registrant waives this requirement. The time and place for ~~said~~ the hearing must be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, must be served upon the accused registrant either personally or sent by registered ~~or certified~~ mail to the last-known address of ~~such individual~~ the registrant at least thirty days before the date fixed for hearing. At any hearing the accused registrant has the right to appear in person or by counsel, or both; to cross-examine witnesses appearing against the accused; and to produce evidence and witnesses in defense of the accused. If the accused ~~person~~ fails or refuses to appear, the board may proceed to hear and determine the validity of the

charges. ~~If after such hearing~~ Following the hearing, the board members who did not serve on the investigative panel shall deliberate in executive session and if a majority of the board members who did not serve on the investigative panel vote in favor of sustaining the charges, the board shall make findings of fact, ~~draw its~~ and conclusions of law and shall issue ~~its~~ the board's order ~~therein~~, and serve the ~~same~~ findings, conclusions, and order upon the accused. In ~~said~~ the order the board may reprimand, suspend, refuse to renew, or revoke the accused ~~individual's~~ registrant's certificate of registration. Any ~~person~~ registrant who feels aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking that ~~person's~~ registrant's certificate of registration; may appeal ~~therefrom~~ the board's action to the district court under the procedures provided by chapter 28-32.

SECTION 27. AMENDMENT. Section 43-19.1-27 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-27. Right to practice.

1. ~~No person shall~~ A person may not practice or offer to practice professional engineering or land surveying, as defined by this chapter, unless ~~such~~ the person is duly an individual registered to practice under or exempt from the provisions of this chapter.
2. The following are not considered offering to practice engineering or surveying in the solicitation of work if the engineer or surveyor is licensed in another jurisdiction:
 - a. Advertising in a publication or electronic media if there is no holding out of professional services in jurisdictions in which not licensed.
 - b. Responding to a letter of inquiry regarding a request for proposals if there is written disclosure the engineer, surveyor, or firm is not licensed in this state and the response is limited to inquiries regarding scope of project and to demonstrate interest.
 - c. Responding to a letter of inquiry from a prospective client if there is written disclosure that the engineer, surveyor, or firm is not licensed in this state and the response is limited to inquiries regarding scope of project and to demonstrate interest.
 - d. Using the title or designation "professional engineer", "licensed engineer", "P.E.", "professional surveyor", "licensed surveyor", "P.L.S.", or similar title or designation in correspondence or on business cards from an office in the jurisdiction in which licensure is held.
3. Notwithstanding subsection 2, a proposal may not be submitted, a contract may not be signed, or work may not be commenced until an engineer, surveyor, or firm becomes licensed as provided under this chapter.
4. A registered professional engineer or registered land surveyor may practice or offer to practice professional engineering or land surveying by registered professional engineers or registered land surveyors, organized as a partnership, incorporated as a professional corporation under the provisions of the professional corporations law of this state, or

organized as a limited liability company under the professional limited liability company law of this state; or under the provisions of a similar law of any other state; is hereby authorized; provided all of the partners of such partnership, each officer and shareholder in the case of a professional corporation, or each manager and member in the case of a professional limited liability company are duly as an organization or as an individual operating under a trade name if the organization is registered under or exempt from the provisions of this chapter.

- 3- 5. In addition to and without impairing any rights or exemptions granted others in this chapter, the practice of or offer to practice professional engineering or land surveying as defined in this chapter, by individual engineers or land surveyors registered under this chapter either through or as an officer, employee, or agent of a partnership or corporation, or by a partnership or a corporation or limited liability company, other than a professional corporation or professional limited liability company, through individual engineers or land surveyors registered under this chapter, by an organization or by an individual operating under a trade name is permitted in this state provided if:
- a. All officers, ~~managers,~~ employees, and agents of such a ~~partnership, corporation, or limited liability company~~ an organization or the individual operating under a trade name who will perform the practice of engineering or of land surveying within this state for such ~~partnership, corporation, or limited liability company~~ are registered under this chapter;
 - b. Each person in responsible charge of the activities of any ~~such partnership, corporation, or limited liability company,~~ organization or individual operating under a trade name which activities constitute the practice of professional engineering and land surveying, is a professional engineer or land surveyor registered in this state or a ~~person~~ an individual authorized to practice professional engineering or land surveying as provided in this chapter;
 - c. Such ~~partnership, corporation, or limited liability company~~ organization or individual operating under a trade name has been issued a certificate of ~~authorization~~ commercial practice by the board as provided by subsection 4 ~~6;~~
 - d. Each ~~such partnership, corporation, or limited liability company~~ shall be organization or individual operating under a trade name is jointly and severally responsible with and for the conduct or acts of its agents, employees, officers, or managers in respect to any professional engineering or land surveying services performed or to be executed in this state. ~~No~~ An individual practicing professional engineering or land surveying ~~shall may not~~ be relieved of the responsibility for the individual's conduct or acts performed by reason of the individual's employment by or relationship with such ~~partnership, corporation, or limited liability company~~ organization or individual operating under a trade name; and
 - e. All final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the

practice of professional engineering or land surveyors as defined in this chapter surveying, when issued presented to a client, contractor, subconsultant, or any public agency, shall must be dated and bear the seals and signatures of the professional engineers or land surveyors registered under this chapter by whom or under whose responsible charge they were prepared. A working drawing or unfinished document must contain a statement to the effect the drawing or document is preliminary and not for construction, recording purposes, or implementation. It is unlawful for a registrant to affix or permit the registrant's seal and signature or facsimiles thereof to be affixed to any engineering drawing, specification, map, plat, report, or other document after the expiration or revocation or during the suspension of a certificate or for the purpose of aiding and abetting any other person to evade or attempt to evade any provision of this chapter.

- 4- 6. A partnership, corporation, or limited liability company An organization or individual operating under a trade name desiring a certificate of authorization commercial practice or the renewal thereof shall file a written application with the board setting forth the names and addresses of all partners, officers, directors, managers, or governors, if any, of such partnership, officers and directors of such corporation, or managers and governors of such limited liability company, organization and the names and addresses of all employees who are duly registered to practice professional engineering or land surveying in this state, and who are or will be in responsible charge of any engineering or land surveying in this state by such partnership, corporation, or limited liability company organization or individual operating under a trade name, together with other information as the board may require. Upon the receipt of an application, and of a fee in an amount established by the board for the initial certificate or annual renewal thereof, but not to exceed the amount of one two hundred dollars per year, the board shall issue to such partnership, corporation, or limited liability company organization or individual operating under a trade name a certificate of authorization commercial practice or a renewal thereof, which certificate of authorization shall commercial practice is not be transferable. Should If the board find finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. Should If a change occur occurs in any of the information submitted on the application of any partnership, corporation, or limited liability company organization or individual operating under a trade name within the term of authorization the certificate of commercial practice, such partnership, corporation, or limited liability company the organization or individual operating under a trade name shall file with the board a written report with respect thereto to the change within thirty days after such the change occurs. The provisions with respect to issuance, expiration, renewal, and reissuance of the certificates of registration of individuals contained in this chapter shall also apply to certificates of authorization commercial practice issued to partnerships, corporations, and limited liability companies an organization or individual operating under a trade name under this subsection. Partnerships, corporations, or limited liability companies shall be An organization or individual operating under a trade name is subject to disciplinary proceedings and penalties, and certificates of authorization shall be commercial practice are subject to suspension or revocation for cause in the same manner and to the

same extent as is provided with respect to ~~an individual persons~~ and ~~their the individual's~~ certificates of registration in sections 43-19.1-26, 43-19.1-29, and 43-19.1-31. "Registrant" and "certificate of registration" in sections 43-19.1-26, 43-19.1-29, and 43-19.1-31, and the provisions of such sections, ~~shall for the purpose of such sections be deemed to include and apply respectively to any partnership, corporation, or limited liability company holding organization or individual operating under a trade name that holds a certificate of authorization commercial practice issued under this chapter, and to such certificate of authorization commercial practice.~~

SECTION 28. AMENDMENT. Section 43-19.1-29 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-29. Exemption clause. This chapter ~~shall~~ does not be ~~construed~~ to prevent or affect:

1. The practice or offer to practice engineering by a ~~person~~ an individual not a resident or having no established place of business in this state, if that ~~person individual~~ is legally qualified by registration to practice engineering, ~~as defined in this chapter,~~ in another state or country ~~which that~~ extends similar privileges to ~~persons individuals~~ registered under this chapter. However, that ~~person must~~ individual shall make an application accompanied by the appropriate application fee to the board in writing ~~prior to before~~ practicing or offering to practice engineering, and may be granted a one-time temporary permit for a definite period of time not to exceed one year to do a specific job. No right to practice engineering accrues to any applicant with respect to any other work not set forth in the temporary permit. A land surveyor ~~as defined in this chapter~~ may not receive a temporary permit under this subsection.
2. The work of an employee or a subordinate of a ~~person~~ an individual holding a certificate of registration under this chapter, or an employee of a ~~person~~ an individual practicing lawfully under subsection 1; provided such work does not include final engineering or surveying designs or decisions and is done under the direct supervision of and verified by a ~~person~~ an individual holding a certificate of registration under this chapter, or a ~~person~~ an individual practicing lawfully under subsection 1.
3. The practice of engineering or surveying for a county by a ~~person not registered under this chapter whose appointment as county engineer or county highway superintendent was in effect on January 1, 1967.~~
4. The practice of any other legally recognized profession or trade, nor ~~shall it be construed to~~ does the chapter permit registered professional engineers to perform duties requiring the services of a licensed architect, as provided by the laws of the state of North Dakota licensing and regulating architects and architecture.
5. 4. The practice of engineering ~~and or~~ land surveying by any ~~person~~ individual regularly employed to perform engineering services solely for that ~~person's individual's~~ employer or for a subsidiary or affiliated corporation or limited liability company of that ~~person's individual's~~ employer, providing the ~~engineering services performed~~ are in connection with the property, products, or services of that ~~person's~~

individual's employer, unless the board determines the property, products, or services are of a unique type requiring registration to protect the public.

SECTION 29. AMENDMENT. Section 43-19.1-30 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-30. Duties of recorder. It is unlawful for the recorder of any county or any county or any proper public authority to file or record any map, plat, survey, or other document within the definition of land surveying; which does not have impressed thereon and affixed thereto; the personal signature and seal of a registered professional land surveyor by whom the map, plat, survey, or other document was prepared.

SECTION 30. AMENDMENT. Section 43-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-31. Violation and penalties. Any person ~~who that~~ practices; or offers to practice; engineering or land surveying in this state without being registered in accordance with the provisions of this chapter; ~~or~~ any person using or employing the words "engineer" ~~or~~ "engineering" ~~or~~ "professional engineer" ~~or~~ "surveyor" ~~or~~ "land surveyor"; "professional land surveyor"; or any modification or derivative ~~thereof of these terms~~ in that person's name ~~or~~ form of business; or activity, except as authorized in this chapter; ~~or~~ any person presenting or attempting to use the certificate of registration or the seal of another; ~~or~~ any person ~~who gives~~ giving any false or forged evidence of any kind to the board or to any member ~~thereof of the board~~ in obtaining or attempting to obtain a certificate of registration; or any person ~~who falsely impersonates~~ impersonating any other registrant of like or different name; ~~or~~ any person ~~who attempts~~ attempting to use an expired or revoked or nonexistent certificate of registration; ~~or who practices~~ practicing or ~~offers offering~~ to practice when not qualified; ~~or~~ any person ~~who falsely claims that~~ claiming that person is registered under this chapter; or any person ~~who violates~~ violating any of the provisions of this chapter; is guilty of a class B misdemeanor. It is the duty of all duly constituted officers of the state, and of all political subdivisions ~~thereof of the state~~, to enforce the provisions of this chapter.

SECTION 31. AMENDMENT. Section 43-19.1-33 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-33. 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~~ 4 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.

SECTION 32. A new section to chapter 43-19.1 of the North Dakota Century Code is created and enacted as follows:

Retired registrant. The board may recognize an individual who is no longer practicing as an engineer or land surveyor as a retired registrant.

CHAPTER 369**HOUSE BILL NO. 1176**

(Human Services Committee)

(At the request of the State Board of Dental Examiners)

AN ACT to create and enact five new sections to chapter 43-20, a new subsection to section 43-28-02, three new sections to chapter 43-28, and section 43-28-18.2 of the North Dakota Century Code, relating to licensing of dental assistants and hygienists and dentists; to amend and reenact sections 43-20-03, 43-20-05, 43-20-06, 43-20-08, 43-20-09, 43-20-10, 43-20-12.2, 43-20-13.1, and 43-28-01, subsection 2 of section 43-28-06, sections 43-28-10, 43-28-11, 43-28-13, 43-28-15, 43-28-16, 43-28-17, and 43-28-18, subsection 1 of section 43-28-18.1, and sections 43-28-24 and 43-28-25 of the North Dakota Century Code, relating to the practice and licensing of dental assistants and hygienists and dentists; to repeal sections 43-20-01, 43-20-02, 43-20-07, 43-20-12.1, 43-28-12, 43-28-12.1, 43-28-12.2, 43-28-14, 43-28-19, 43-28-20, 43-28-21, and 43-28-22 of the North Dakota Century Code, relating to the practice and licensing of dental hygienists and dentists; and to provide an effective date.

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:

Definitions. As used in this chapter and chapter 43-28, unless the context otherwise requires:

1. "Dental assistant" means an individual who provides dental assistance under the supervision of a dentist and within the scope of practice established by rule and section 43-20-13.
2. "Dental hygienist" means an individual licensed to practice dental hygiene.
3. "Qualified dental assistant" means an individual registered as a qualified dental assistant to provide dental assistance as established by rule.
4. "Registered dental assistant" means an individual registered as a registered dental assistant to provide dental assistance as established by rule.

SECTION 2. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental hygienist licensing. An individual seeking to practice dental hygiene in this state shall apply to the executive director of the board on forms prescribed by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true to the applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the board meeting at which the application is considered. The applicant shall enclose with the application a recent autographed picture of the applicant and an

application fee established by the board by rule. The board may grant a license to practice dental hygiene to an applicant who has met all of the following requirements:

1. The applicant is a graduate of a dental hygiene school accredited by the American dental association's commission on dental accreditation.
2. The applicant has passed an examination administered by the joint commission on national dental examinations.
3. The applicant has passed a clinical competency examination administered by a regional dental testing service or a licensing jurisdiction approved by the board by rule.
4. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.
5. Grounds for denial of the application under section 43-20-05 do not exist.
6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 3. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Licensure by credential review. Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, for at least three years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 4. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

License renewal - Audit.

1. Dental hygienist licenses expire on December thirty-first of every odd-numbered year.
2. Licenses may be renewed by December thirty-first of the odd-numbered year by submitting a renewal application, a renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the dental hygienist's license is not revoked or grounds for denial under section 43-20-05 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the odd-numbered year, the license expires and the dental hygienist may not practice dental hygiene.
4. Within sixty days after December thirty-first of the odd-numbered year, an expired license may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the odd-numbered year, the license may not be renewed, and the dental hygienist must apply for and meet the requirements for licensure to be granted a license.
6. The board may extend the renewal deadlines for a dental hygienist providing proof of medical or other hardship rendering the dental hygienist unable to meet the deadline.
7. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of continuing education activities. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

SECTION 5. AMENDMENT. Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-03. Dental hygienists - Practice by. As used in this chapter, "dental hygiene" and the practice thereof means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth if such acts are performed under the direct, modified general, or general supervision of a licensed dentist. General supervision may be ~~utilized only~~ used if the ~~following conditions are met:~~

1. The patient is a patient of record who has been examined by the dentist within the past twelve months;
2. The patient is being treated at the primary or satellite practice location of the supervising dentist, a public health setting, a hospital, a long-term care facility, or in an institutional type setting;
3. A current treatment plan is in place; and
4. Any delegated procedure is preauthorized by the supervising dentist. procedures are authorized in advance by the supervising dentist, except procedures which may only be used under direct supervision as established by the board by rule.

Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the board of dental examiners by appropriate rules.

SECTION 6. AMENDMENT. Section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

43-20-05. Licenses and registrations - ~~Suspension, revocation, refusal to renew, and reinstatements~~ Denial and discipline. ~~The board of dental examiners may suspend or revoke, with power to reinstate, or refuse to renew deny an application for or take disciplinary action against a dental hygienist's license or a registered or qualified dental assistant's registration, upon any one or more of the following grounds:~~

1. Gross immorality or unprofessional conduct, which includes knowingly failing to comply with commonly accepted national infection control guidelines and standards.
2. Failure, neglect, or refusal to renew a license biennially.
3. Nonobservance or violation of this chapter, or of any board rule adopted under this chapter.
4. Gross ~~inefficiency~~ incompetency in the practice of dental hygiene. ~~The board may suspend or revoke, with power to reinstate, the license of any licensed dentist who permits any dental hygienist, operating under the dentist's supervision, to perform any operation other than that permitted under this chapter, or who knowingly permits any person who is not a licensed dental hygienist to perform any operations or services as such under that dentist's supervision.~~
5. Conviction of an offense determined by the board to have a direct bearing on the individual's ability to serve the public as a dental hygienist or a registered or qualified dental assistant, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
6. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
7. Abused, is dependent on, or addicted to the use of alcohol or drugs.

8. Engaged in fraud or deceit in obtaining a dental hygiene license or dental assisting registration.
9. Disclosed confidential information.
10. Received a fee for the referral of patients to a dentist or dental hygienist.
11. Used unethical measures to draw dental patronage from the practice of another licensee.
12. Fraudulently prescribed or dispensed drugs or medications.
13. Knowingly submitted misleading, deceptive, untrue, or fraudulent information on a claim form, bill, or statement to a third party.
14. Advised or directed patients to dental laboratories or dental laboratory technicians for a dental service or advised or directed patients to deal directly with laboratories or dental laboratory technicians.
15. Violated the code of ethics adopted by the board by rule.
16. Had a registration or license suspended, revoked, or disciplined in another jurisdiction.
17. Failed to report to the board in writing within sixty days a violation of this chapter or chapter 43-28.
18. Practiced outside the scope of practice established by the board by rules and this chapter.

The procedure to be followed in the case of a suspension, revocation, or reinstatement must for taking disciplinary action must be the same as that prescribed by law in the case of suspension, revocation, or reinstatement of a licensed dentist the procedure required by section 43-28-18.2.

SECTION 7. AMENDMENT. Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

43-20-06. License - Cancellation - Inactive status. At least thirty days before January first of each even-numbered year, the board of dental examiners shall send a renewal notice that includes a form for continuing education reporting and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. If a licensee fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the license without a hearing. The board shall record the cancellation and notify the dental hygienist of the cancellation. The payment of the biennial fee within that thirty-day period, with an additional sum determined by the board, excuses the default. Upon payment of a fee determined by the board, a licensee dental hygienist may request to have the licensee's dental hygienist's license placed on inactive status upon expiration of the license. While on inactive status, the individual dental hygienist may not engage in the practice of dental hygiene in the state until the individual dental hygienist submits a renewal application, pays the renewal fee, and meets any additional requirements established by rule of the board.

SECTION 8. AMENDMENT. Section 43-20-08 of the North Dakota Century Code is amended and reenacted as follows:

43-20-08. Unlawful to employ unlicensed hygienist - Unlawful to practice without license or registration. ~~No~~ A person may not practice dental hygiene or practice as a registered or qualified dental assistant in the state of North Dakota, without first obtaining from the North Dakota state board of dental examiners a license authorizing such person to practice dental hygiene in this state, and it is unlawful for any person to employ an unlicensed dental hygienist for the performance of any operations or services as such, or permit such unlicensed person to perform any operations or services as such, under that person's supervision or registration. A person may not practice as a dental assistant outside the scope of practice established by the board by rule and section 43-20-13.

SECTION 9. AMENDMENT. Section 43-20-09 of the North Dakota Century Code is amended and reenacted as follows:

43-20-09. Violation of chapter a misdemeanor. Any A person violating any provision of this chapter section 43-20-08 is guilty of a class B misdemeanor.

SECTION 10. AMENDMENT. Section 43-20-10 of the North Dakota Century Code is amended and reenacted as follows:

43-20-10. State board of dental examiners - Authority - Duty. The North Dakota state board of dental examiners has the power and it is its duty to enforce the provisions of this chapter. The board has the power to make such rules and regulations, not inconsistent with this chapter, as may, in its judgment, be necessary for the proper enforcement of this chapter, and the examination of dental hygienists and registered and qualified dental assistants for their conduct and practice. For purposes of this chapter, the board has the powers set forth in section 43-28-06.

SECTION 11. AMENDMENT. Section 43-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.2. Notice to board of change of address. A licensed dental hygienist, registered dental assistant, or qualified dental assistant shall notify the executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental hygienist, registered dental assistant, or qualified dental assistant may not practice in this state for more than thirty days after the change of address without complying with this section.

SECTION 12. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Registered and qualified dental assistant registration. To be registered as a registered or qualified dental assistant, an individual shall apply and meet the requirements established by the board by rule.

SECTION 13. AMENDMENT. Section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-13.1. Continuing education requirement for registered dental assistants Registration renewal.

1. At least thirty days before January first of each year the board of dental examiners shall send a renewal notice that includes an affidavit for continuing education reporting and an application for registration renewal to each registrant at the registrant's last place of residence as noted in the records of the board. If a registrant fails to pay the fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the registration without a hearing. The board shall record the cancellation and notify the dental assistant of the cancellation. Each individual registered as a dental assistant shall provide the board evidence satisfactory to the board that the individual has attended or participated in the amount of continuing education as is required by the board. The board may establish a minimum continuing education requirement which may not be less than eight hours during a twelve-month registration. The board may accept for compliance with the continuing education requirement any of the following activities which may contribute directly to the dental education of the registrant:
 - a. Proof of attendance at a lecture, study club, college postgraduate course, or scientific session of a convention.
 - b. Proof of research, graduate study, teaching, or service as a clinician.
 - c. Proof of any other continuing education approved by the board.
2. The board may select a random sample of the registrants for audit of continuing education credits. Each registrant shall maintain certificates or records of continuing education credit. The board shall notify a registered dental assistant selected for a continuing education audit. If a registered dental assistant is selected for a continuing education audit, the dental assistant shall provide satisfactory documentation of attendance at or participation in the continuing education activities included on the registrant's sworn affidavit. The failure to comply with an audit may be grounds for nonrenewal of the registration. A dental assistant who fails to comply with the continuing education requirements may be reexamined by the board to determine the individual's competency to continue engaging in dental-assisting activities. If the board determines that the dental assistant is not qualified, the board shall suspend the registration until the individual provides acceptable evidence to the board of the individual's competency to practice as a dental assistant. All registrations of registered and qualified dental assistants expire on December thirty-first of every even-numbered year.
2. A registration may be renewed by submitting a renewal application, renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the registration is not revoked or grounds for denial under section 43-20-05 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the even-numbered year, the registration expires and the registered or qualified dental assistant may not practice as a registered or qualified dental assistant.

4. Within sixty days after December thirty-first of the even-numbered year, an expired registration may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the even-numbered year, the registration may not be renewed, and the registered or qualified dental assistant must apply for and meet the requirements for registration to be granted registration.
6. The board may extend the renewal deadline for a registered or qualified dental assistant providing proof of medical or other hardship rendering the registered or qualified dental assistant unable to meet the deadline.

SECTION 14. AMENDMENT. Section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

43-28-01. Definitions. As used in this chapter and chapter 43-20, unless the context otherwise requires:

1. "Accredited dental school" means a dental school, college, or university accredited by the commission on dental accreditation of the American dental association or its successor.
2. "Advertising" means to invite the attention of or give notice to the public, by any means, medium, or manner whatsoever of any fact, information, or data pertaining to or being conducive of the practice of dentistry in this state.
- ~~2-~~ 3. "Board" means the state board of dental examiners.
- ~~3-~~ 4. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the biennial registration fee required by this chapter.
4. 5. "Dentist" means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.
- ~~5-~~ 6. "License" means the right, authority, or permission granted by the board to practice dentistry in this state.
6. 7. For the purposes of this chapter, the term "practice Practice of dentistry" includes means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

SECTION 15. A new subsection to section 43-28-02 of the North Dakota Century Code is created and enacted as follows:

To registered dental hygienists, registered dental assistants, qualified dental assistants, and dental assistants practicing within the scope of practice and under supervision as required by chapter 43-20 and by rule.

SECTION 16. AMENDMENT. Subsection 2 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

2. Examine applicants for licenses or registration to practice dentistry ~~or~~ dental hygiene, or dental assisting in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.

SECTION 17. AMENDMENT. Section 43-28-10 of the North Dakota Century Code is amended and reenacted as follows:

43-28-10. License and certificate required - Scope of practice. A person may not practice dentistry in this state unless that person is a dentist. ~~A dentist shall practice within the scope of that dentist's education, advanced training as recognized by the board, and any specialty practice recognized by the American dental association or other professional entity recognized by the board.~~

SECTION 18. AMENDMENT. Section 43-28-11 of the North Dakota Century Code is amended and reenacted as follows:

43-28-11. Examination required - Application - Qualifications - Fees. An individual seeking to practice dentistry in this state shall apply to the executive director of the board on forms prescribed by the board ~~and shall submit to an examination by the board.~~ The application must be verified under oath to the effect that all of the statements contained in the application are true of the applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the ~~date of the examination board meeting at which it is considered.~~ The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board by rule. ~~Additional costs of regional or other states' examinations as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant shall show proof that the applicant:~~

1. ~~Is a graduate of a dental college recognized by the board.~~
2. ~~Is of good moral character.~~

SECTION 19. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Requirements for licensure. The board may grant a license to practice dentistry to an applicant who has met all of the following requirements:

1. The applicant has a doctorate of dental surgery or doctorate of dental medicine degree from an accredited dental school.
2. The applicant has passed the examination administered by the joint commission on national dental examinations.

3. The applicant has passed a clinical competency examination administered by a regional dental testing service approved by the board by rule.
4. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
5. Grounds for denial of the application under section 43-28-18 do not exist.
6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 20. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

License renewals.

1. Licenses expire on December thirty-first of every odd-numbered year.
2. Licenses may be renewed by December thirty-first of the odd-numbered year by submitting a renewal application, a renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the dentist's license is not revoked or grounds for denial under section 43-28-18 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the odd-numbered year, the license expires and the dentist may not practice dentistry.
4. Within sixty days after December thirty-first of the odd-numbered year, an expired license may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the odd-numbered year, the license may not be renewed, and the dentist must apply for and meet the requirements for licensure to be granted a license.
6. The board may extend the renewal deadlines for a dentist providing proof of medical or other hardship rendering the dentist unable to meet the deadline.

SECTION 21. AMENDMENT. Section 43-28-13 of the North Dakota Century Code is amended and reenacted as follows:

43-28-13. License - When certificate issued - When reexamination required. If an applicant has the necessary qualifications and successfully passes the examination for a license to practice dentistry in this state, or an equivalent examination in another state as set out in section 43-28-12.1, the board may:

1. ~~Issue to the applicant a license to practice dentistry in this state, which must be entered upon the records of the board.~~
2. ~~Issue said licensed dentist a certificate of registration in the form prescribed by the board. Any dentist so licensed and registered, who does not undertake the actual practice of dentistry in this state within five years from the date of the dentist's license and registration, shall, before engaging in the practice of dentistry in this state, notify the board of the intention in writing so to do, whereupon the . The board, after a full investigation, may reexamine said the dentist as to the dentist's qualifications to practice dentistry in this state should, if the board deem deems such reexamination necessary and notify such dentist thereof. The failure of such the dentist to give the written notice to the board required herein before engaging in the practice of dentistry in this state operates as a forfeiture of the dentist's license to practice dentistry is grounds for disciplinary action.~~

SECTION 22. AMENDMENT. Section 43-28-15 of the North Dakota Century Code is amended and reenacted as follows:

43-28-15. Licensure by credential review. The board may issue a license and certificate of registration to practice dentistry in this state to ~~any individual who wishes to practice dentistry in North Dakota upon a practical examination, if the individual~~ an applicant who meets all of the following requirements:

1. ~~Has~~ The applicant, for at least five years immediately preceding application, has been licensed in good standing and has been actively practicing dentistry for at least five years immediately preceding application to practice dentistry in another state jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. ~~Is a reputable, competent dentist of good moral character as evidenced by reference letters from three licensed dentists attesting to clinical competence, professional attainment, and good moral character~~ Grounds for denial of the application under section 43-28-18 do not exist.
3. ~~Pays~~ The applicant pays to the board the fee determined by the board by rule.
4. ~~Delivers~~ The applicant delivers to the board a certificate from the examining or licensing board of every state jurisdiction in which the individual is practicing or is licensed to practice, certifying that the individual is a licensed and registered dentist in good standing in that state, and is of good moral character jurisdiction.
5. ~~Demonstrates the individual's ability to the satisfaction of the board.~~

~~The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.~~

6. The applicant meets any requirement for licensure established by the board by rule.

SECTION 23. AMENDMENT. Section 43-28-16 of the North Dakota Century Code is amended and reenacted as follows:

43-28-16. Certificate - Term - Displayed in place of business - Renewal - Fee. A certificate of registration issued under this chapter is valid for two years and must be renewed in the month prior to expiration. The fee for renewal of the certificate must be determined by the board and must be submitted at the time of renewal. The holder of a license and certificate of registration shall display the license and certificate conspicuously in the holder's place of business. The certificate of registration or the renewal of the certificate is prima facie evidence of the right of the holder to practice dentistry in this state during the time for which it is issued. All fees provided for in this chapter may be collected by the board in a civil action.

SECTION 24. AMENDMENT. Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

43-28-17. Failure to pay biennial fee - Cancellation of license - Inactive status. If a licensed dentist fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may cancel the license, notify the dentist of the cancellation, and record the cancellation. The payment of the biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default. Upon payment of a fee determined by the board, a licensee dentist may request to have the licensee's dentist's license placed on inactive status upon expiration of the license. While on inactive status, the licensee dentist may not engage in the practice of dentistry in the state until the individual submits a dentist applies for reinstatement application, pays a renewal fee, and meets any additional requirements established by rule of the board.

SECTION 25. AMENDMENT. Section 43-28-18 of the North Dakota Century Code is amended and reenacted as follows:

43-28-18. Grounds for revocation or suspension denial of or disciplinary action against license and certificate. The board may revoke, suspend, limit, or restrict the scope of deny an application or take disciplinary action against the license and the certificate of registration of any applicant or dentist who has:

1. Been guilty of Engaged in dishonorable, unprofessional, or immoral conduct.
2. Been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance Abused, is dependent on, or addicted to the use of alcohol or drugs.
5. Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.

6. ~~Become~~ Been grossly negligent in the practice of ~~the profession~~ dentistry.
7. ~~Practiced~~ Engaged in fraud ~~and or~~ or deceit in obtaining the license or in the practice of dentistry.
8. ~~Willfully betrayed~~ Disclosed confidential ~~relations~~ information.
9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit ~~licensed~~ dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a ~~licensed~~ dentist from employing any other ~~licensed~~ dentist or ~~licensed~~ dental hygienist.
10. Used any advertising of any character tending to mislead and deceive the public, including advertising the public could reasonably interpret as indicating the dentist is qualified to practice a dental specialty, if the practice of that dental specialty would be outside the scope of practice for which the dentist is qualified to practice.
11. Failed to ~~demonstrate~~ meet minimum standards of professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence competence. When these deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.
12. Prescribed, administered, or dispensed medications for reasons or conditions outside the scope of dental practice.
13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
14. Directed ~~auxiliary personnel~~ others to perform acts or provide dental services for which ~~the personnel are~~ they were not licensed or qualified or ~~are~~ were prohibited by law or rule from performing or providing.
15. ~~Willfully engaged in~~ Submitted fraudulent ~~submission~~ of insurance claims.
16. Made any false or untrue statements in ~~the~~ an application for an examination to obtain a license to practice dentistry.
17. Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.
18. Made any false claims that the individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
19. Failed to comply with commonly accepted national infection control guidelines and standards.

20. Abandoned the dentist's practice as defined by in violation of rules adopted by the board.
21. Failed to report to the board as required under section 43-28-18.1.
22. Failed to practice within the scope of that dentist's education or advanced training as recognized by the board, the American dental association, or other professional entity recognized by the board.
23. Failed to release copies of dental or medical records requested by a patient of record or violated section 23-12-14. Dental records may include any document, charting, study models, doctor's notations, billing information, insurance document or combination of documents that pertains to a patient's medical history, diagnosis, prognosis, or medical condition, which is generated and maintained in the process of the patient's dental health care treatment.
24. Advised or directed patients to dental laboratories or dental laboratory technicians for any dental service or advised or directed patients to deal directly with laboratories or dental laboratory technicians without first having furnished the dental laboratory or dental laboratory technician a written prescription.
25. Worked or cooperated with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the referral of laboratory patrons for professional services.
26. Used the services of a person or entity not licensed to practice dentistry in this state, or constructed, altered, repaired, or duplicated a denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
27. Violated the code of ethics adopted by the board by rule.
28. Violated this chapter or rules adopted by the board.
29. Had the applicant's or dentist's license suspended, revoked, or disciplined in another jurisdiction.

SECTION 26. AMENDMENT. Subsection 1 of section 43-28-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A dentist shall report to the board in writing within ~~ninety~~ sixty days of the event any illegal, unethical, or errant behavior or conduct of the dentist, including the following events, proceedings, or formal or informal actions:
 - a. A dental malpractice judgment or malpractice settlement or a final judgment by a court in favor of any party and against the licensee.
 - b. A final disposition regarding the surrender of a license, or adverse action taken against a license by a licensing agency in another state, territory, or country; a governmental agency; a law enforcement agency; or a court for an act or conduct that would constitute grounds for discipline under this chapter.

- c. A mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.

SECTION 27. Section 43-28-18.2 of the North Dakota Century Code is created and enacted as follows:

43-28-18.2. Disciplinary procedure.

1. A person may file a written and signed complaint with the board alleging a dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. The board may also initiate a complaint and investigation on the board's motion.
2. The board may direct a complaint committee to investigate a complaint and recommend whether the board should initiate a disciplinary action against the dentist.
3. The board or complaint committee shall notify the dentist of the complaint, and require a written response from the dentist. The board or complaint committee may examine and copy records, including patient records, examine witnesses, obtain expert opinions, require the dentist to be physically or mentally examined, or both, by qualified professionals selected by the board, and take any other action necessary to investigate the complaint. A request by the board or complaint committee is authorized to disclose patient information and records to the board or complaint committee. Patient information and records disclosed to the board or complaint committee are confidential. The dentist shall cooperate with the board or the complaint committee in the investigation, including responding promptly and completely to a request or requirement.
4. The complaint, response, and any record received by the board in investigating the complaint are exempt records, as defined in section 44-04-17.1, until the board determines to proceed with a disciplinary action.
5. The board shall determine if there is a reasonable basis to believe the dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. If the board determines there is not a reasonable basis to believe, the board shall notify the complainant and the dentist. If the board determines there is a reasonable basis to believe, the board shall proceed with a disciplinary action in accordance with chapter 28-32.
6. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.
7. The board may impose a fee on the dentist for all or part of the costs of an action resulting in discipline, including administrative costs, investigation costs, attorney's fees, witness fees, the cost of the office of administrative hearings' services, and court costs.

SECTION 28. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Temporary suspension - Appeal.

1. When, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the dentist would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the dentist's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the dentist, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the dentist.
2. An ex parte temporary suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, must be taken against the dentist who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The dentist is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The dentist may appeal the ex parte temporary suspension order before the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition.
5. A dental or medical record of a patient, or other document containing personal information relating to a patient, which is obtained by the board is confidential.

SECTION 29. AMENDMENT. Section 43-28-24 of the North Dakota Century Code is amended and reenacted as follows:

43-28-24. Duplicate license and certificate - When issued - Fee. If a license or certificate of registration to practice dentistry in this state is lost or destroyed, the board shall issue and deliver a duplicate license or certificate upon satisfactory proof by the applicant of the loss or destruction. The fee for a duplicate license must be determined by the board and the fee for issuing a duplicate certificate of registration must be determined by the board for a fee established by rule.

SECTION 30. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ, keep, or retain any unregistered dentist, dental hygienist, dental assistant, or other unregistered persons to do any dental work whatsoever, except as otherwise provided by statute or rule.
2. For any dentist to help or assist any unlicensed person to perform any act or operation that is defined as the practice of dentistry.
3. For any dentist to advise or direct patients to dental laboratories or dental laboratory technicians for any dental service, or to advise or direct patients to deal directly with laboratories or dental laboratory technicians.
4. For any dentist to work or cooperate with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the reference of laboratory patrons for professional services.
5. For any dentist to use the services of any person or legal entity not licensed to practice dentistry in this state, to construct, alter, repair, or duplicate any denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance, without first furnishing such unlicensed person a written prescription on forms prescribed by the board which must contain:
 - a. The name and address of such unlicensed person;
 - b. The patient's name or number and, in the event such number is used, the name of the patient must be written upon the duplicate copy of such prescription retained by the dentist;
 - c. The date on which it was written;
 - d. A prescription of the work to be done, with diagram, if necessary;
 - e. A specification of the type and quality of materials to be used; and
 - f. The signature of the dentist and the number of the dentist's North Dakota license.

Such unlicensed person shall retain the original prescription and the dentist shall retain a duplicate copy thereof for inspection by the board or the board's agent for two years.
6. For any dentist:
 - a. To use the service of any unlicensed persons without first having furnished the unlicensed person such prescription;
 - b. To fail to retain a duplicate copy thereof for two years; or
 - c. To refuse to allow the board or the board's agent to inspect such prescription during the two-year period of time.

7. For any unlicensed person:
- a. ~~To perform any such service without first having obtained such prescription;~~
 - b. ~~To fail to retain the original thereof for two years; or~~
 - c. ~~To refuse to allow the board or the board's agent to inspect it during such two-year period of time.~~
- to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
8. 2. For any person:
- a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
9. 3. For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.

SECTION 31. REPEAL. Sections 43-20-01, 43-20-02, 43-20-07, 43-20-12.1, 43-28-12, 43-28-12.1, 43-28-12.2, 43-28-14, 43-28-19, 43-28-20, 43-28-21, and 43-28-22 of the North Dakota Century Code are repealed.

SECTION 32. EFFECTIVE DATE. Section 13 of this Act becomes effective on March 1, 2010.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 370**SENATE BILL NO. 2200**

(Senators J. Lee, Nelson, Nething)
(Representatives Berg, Potter)

AN ACT to amend and reenact section 43-23-08.2 of the North Dakota Century Code, relating to continuing education requirements for real estate brokers and salespersons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-08.2 of the North Dakota Century Code is amended and reenacted as follows:

43-23-08.2. License renewal - Continuing education required. Commencing January 1, 2000, and every two years thereafter,

1. The commission may establish the conditions under which each applicant for renewal of a broker's or salesperson's license shall, in addition to the requirements of section 43-23-08, shall submit proof of participation in not less than sixteen hours of approved continuing education; six of which must be completed in the first year. If a broker or salesperson will not have been licensed two years on the date the individual is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules adopted by the commission. In establishing the conditions for continuing education, the commission may determine the required number of hours, the frequency and conditions of reporting requirements, and all other terms and conditions of continuing education compliance. The commission shall set standards for the approval of lectures, seminars, courses of instruction, and correspondence courses that qualify for satisfaction of this requirement, and shall maintain a current list of lectures, seminars, courses of instruction, and correspondence courses so approved. Lectures, seminars, courses of instruction, and correspondence courses may not require passing of a test to qualify for satisfaction of this requirement. Licensees ~~shall~~ must have the option of attending an approved course of instruction in person or taking an approved correspondence course. Attendance at a course or the completion of a correspondence course must be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.
2. A license may not be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission in accordance with section 43-23-13.1.

3. The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, are exempt from the requirements of this section.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 371

SENATE BILL NO. 2099

(Human Services Committee)

(At the request of the State Board of Massage)

AN ACT to create and enact subsection 5 of section 43-25-02 of the North Dakota Century Code, relating to the definition of remote education; and to amend and reenact subsection 2 of section 43-25-02 and sections 43-25-03, 43-25-04, 43-25-05, 43-25-05.1, 43-25-06, 43-25-07, 43-25-09, 43-25-10, 43-25-13, 43-25-14, and 43-25-18 of the North Dakota Century Code, relating to regulating the practice of massage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁹ **SECTION 1. AMENDMENT.** Subsection 2 of section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, using western and eastern modalities, including superficial hot and cold applications, hydrotherapy, reflexology, shiatsu, acupressure, and the use of salts or lubricants. ~~"Massage" does not include diagnosing or treating diseases, manipulating the spine or other joints, or prescribing or administering vitamins for the purpose of promoting, maintaining, and restoring the health and well-being of the client. The term includes assessment, effleurage (stroking or gliding), petrissage (kneading), tapotement (percussion), compression, vibration, friction, and active or passive range of motion and stretching either by hand, forearm, elbow, knee, foot, or with mechanical appliances for the purpose of body massage. Except as provided in this chapter, "massage" does not include diagnosis or other services that require a license to practice medicine or surgery, osteopathic medicine, chiropractic, occupational therapy, physical therapy, or podiatry and does not include service provided by professionals who act under their state-issued professional license, certification, or registration.~~

¹⁵⁰ **SECTION 2.** Subsection 5 of section 43-25-02 of the North Dakota Century Code is created and enacted as follows:

5. "Remote education" means asynchronous education that is not in person, live, or presented in real time.

SECTION 3. AMENDMENT. Section 43-25-03 of the North Dakota Century Code is amended and reenacted as follows:

¹⁴⁹ Section 43-25-02 was also amended by section 2 of Senate Bill No. 2099, chapter 371.

¹⁵⁰ Section 43-25-02 was also amended by section 1 of Senate Bill No. 2099, chapter 371.

43-25-03. Massage therapists to be licensed. A person may not:

1. Practice massage, attempt to practice massage, or teach massage techniques, for a fee or gratuity or as a free demonstration, without a license issued under this chapter;
2. Operate or conduct a massage establishment unless it meets the requirements adopted by the board;
3. Employ an unlicensed person to perform a massage; or
4. Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." or terms of similar meaning without a license issued by the board.

SECTION 4. AMENDMENT. Section 43-25-04 of the North Dakota Century Code is amended and reenacted as follows:

43-25-04. Exemptions. The following persons are exempt from this chapter:

1. Schools that furnish massage services to their student athletes.
2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist. Students may practice homework unsupervised on other students, family, or friends, but no fee or tip may be charged or accepted. These massages may only be performed at the school or at the residence of the student, family member, or friend.
3. Any individual who is engaged in a profession or occupation for which the individual is licensed by this state, as long as the individual's activities are performed in the course of the bona fide practice of the individual's profession or occupation and as long as the individual does not represent to the public that the individual is a massage therapist or is engaged in the practice of massage and does not perform massage while working in a massage establishment.
4. A health spa or similar business to the extent the spa or business is performing superficial applications used for beautification or health of the skin, including salt glows and contouring.
5. Any individual instructor demonstrating massage techniques as a component of a board-approved seminar.

SECTION 5. AMENDMENT. Section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage - Terms. The governor shall appoint a board of massage, to consist of five members. Three of the members of the board must be massage therapists who are licensed in this state. The members must be appointed for three years, staggered so that the term of one member expires each year. Two additional members, who may not be massage therapists or immediate family members of a massage therapist, must be appointed as consumer members for two-year terms, staggered so that the term of one member expires each year. Each

member of the board holds office until that member's successor is appointed and qualified.

Within one month after appointment of a new member, the board shall meet at some convenient place within the state and shall annually elect a president, vice president, and secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties.

SECTION 6. AMENDMENT. Section 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05.1. Powers and duties of the board. The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board ~~shall~~ may periodically inspect or cause to be inspected all massage establishments. The board and its agents are authorized to enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.
3. The secretary-treasurer may prepare and submit to the governor a biennial report detailing income and expenses and a list of licensed massage therapists.
4. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

SECTION 7. AMENDMENT. Section 43-25-06 of the North Dakota Century Code is amended and reenacted as follows:

43-25-06. Removal of members of board of massage - Officers of the board - Meeting. The governor may remove from office members of the board for neglect of duties as required by this chapter or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on the member's resignation or death.

~~The board shall within two weeks after its appointment meet at some convenient place within the state and shall annually elect a president from their own members, and a secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties.~~

SECTION 8. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

43-25-07. Requisites for application licensure and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate or legal equivalent, and of good moral character and

temperate habits is entitled to apply to the board. An applicant may receive a license from the board as a massage therapist if the applicant:

- a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board;
 - b. Passes an examination conducted or approved by the board; and
 - c. Pays the required fees, which must accompany the application to the board.
2. Any applicant failing to pass the examination is entitled to a reexamination within six months obtain licensure within six months of the initial application is entitled to reapply within six months after notification that the application was rejected, upon payment of an additional a fee of fifty dollars or a lesser amount established by the board; but two reexaminations. Two applications exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 9. AMENDMENT. Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

43-25-09. License - Display - Renewal - Renewal fee.

1. Each license must be conspicuously displayed at the place of practice.
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.
3. Continuing education of at least thirty-two continuing education hours, or equivalent college credits, submitted every two years is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than twelve hours of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability.
 - a. Odd-numbered licensed individuals report their continuing education in odd-numbered years and even-numbered licensed individuals report their continuing education in even-numbered years, based on the calendar year.

- b. This subdivision applies for the initial licensure period. Individuals licensed on or before May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even, would need to report at least sixteen hours. Those not required to submit continuing education that initial January first would report at least twenty-four hours by the following January first. Individuals licensed after May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even would not be required to report that cycle, but would report at least forty-eight hours for the next cycle. Those not required to submit continuing education hours that initial January first would report at least sixteen hours by the following January first. Thereafter, initial licensees would follow the normal renewal reporting cycle.
- c. This subdivision applies to renewing licensees, for the implementation of the continuing education reporting cycle. On or before January 1, 2010, even-numbered licensees would submit at least sixteen hours of continuing education. On or before January 1, 2011, odd-numbered licensees would submit at least thirty-two hours of continuing education.
- 3- 4. If the board reasonably believes a massage therapist or applicant is in a physical condition jeopardizing the health of those who seek relief from the individual, the board may require the individual to have a physical examination by a competent medical examiner. If the individual has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.
- 4- 5. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee ~~and~~. The board may require production of a new certificate of physical examination and evidence of any required continued educational hours being completed.
- 5- 6. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 10. AMENDMENT. Section 43-25-10 of the North Dakota Century Code is amended and reenacted as follows:

43-25-10. ~~Revocation of license~~ Disciplinary actions - Complaints.

1. The license of a massage therapist may be denied, revoked, suspended, or placed on probation for any of the following grounds:
 - a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
 - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or, following conviction of any offense, the person is not sufficiently rehabilitated under section

12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.

- c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
 - d. The licensee is addicted to the habitual use of intoxicating liquors, ~~narcotics, or stimulants~~ or other legal or illegal drugs, to the extent the licensee is ~~incapacitated~~ compromised or impaired from performing the professional duties of a massage therapist or is under the influence while assessing, treating, or seeing a client.
 - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or ~~vitamins,~~ or the licensee infringes on any other licensed profession.
 - f. The licensee is guilty of willful negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
 - g. The licensee has violated this chapter or any rule adopted by the board.
2. A licensee who violates this chapter or any rule adopted by the board may be assessed a civil penalty of up to one hundred dollars.
 3. A complaint may be submitted to the board by any person or on its own motion. A complaint ~~must~~ may be signed by the complainant ~~and verified under oath.~~ The president may initiate an investigation of the complaint and report to the board.
- 3- 4. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

SECTION 11. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is amended and reenacted as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record ~~book~~ of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of this state. The secretary-treasurer shall furnish to any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied; ~~the fee to belong to the secretary-treasurer. The secretary-treasurer may prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed.~~

SECTION 12. AMENDMENT. Section 43-25-14 of the North Dakota Century Code is amended and reenacted as follows:

43-25-14. Compensation of board members - Clerks. The board members shall receive compensation in an amount of ~~sixty-two to be established by rule not to exceed one hundred dollars per day or prorated for partial days for each day or portion of a day~~ the member is actually engaged in the performance of official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. ~~The secretary-treasurer may receive additional compensation as set by the board. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.~~

SECTION 13. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity. Any person who has been duly licensed in another state to practice massage in a state that ~~has and maintains a standard of practice which is substantially the same as that maintained~~ meets required educational hours and requirements in this state, and who has been lawfully and continuously engaged in this practice for two years or more immediately before filing of an application to practice in this state, and who submits to the board a duly attested certificate from the examining board of the state in which registered, certifying to the fact of registration and being a person of good moral character and of professional attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination.

Approved April 22, 2009

Filed April 23, 2009

CHAPTER 372**SENATE BILL NO. 2358**

(Senator Dever)

(Representatives L. Meier, Nathe)

AN ACT to create and enact a new section to chapter 43-28.1 of the North Dakota Century Code, relating to a dental loan repayment program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-28.1 of the North Dakota Century Code is created and enacted as follows:

Loan repayment program for dentists in public health and nonprofit dental clinics.

1. If funds have been appropriated specifically for loan repayment to dentists who practice in a public health setting or a nonprofit dental clinic that uses a sliding fee schedule to bill patients, during the first year of each biennium the health council shall select from a pool of applicants no more than three dentists who provide or will provide dental services in a public health clinic or nonprofit dental clinic that uses a sliding fee schedule to bill patients. A dentist who receives a grant under this section shall use the grant funds to repay the dentist's educational loans. The maximum grant award is sixty thousand dollars per recipient which is paid to the recipient over a two-year period.
2. Unless otherwise provided under this section, sections 43-28.1-02 and 43-28.1-04, subsections 1, 2, and 3 of section 43-28.1-03, and sections 43-28.1-05, 43-28.1-06, 43-28.1-07, 43-28.1-08, and 43-28.1-09 apply to this grant.
3. A recipient who receives a grant under this section shall serve three years as a full-time practicing dentist in the public health setting or a nonprofit clinic that uses a sliding fee schedule to bill patients and must be paid the grant funds during the first two years of this service.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$180,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing grants to dentists under section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 373**SENATE BILL NO. 2113**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

AN ACT to amend and reenact section 43-30-06 of the North Dakota Century Code, relating to applicants for licensure as a private investigative or private security service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-06 of the North Dakota Century Code is amended and reenacted as follows:

43-30-06. License and registration applications. Every person who desires to obtain a license or registration, including nonlicensed members, partners, officers, and owners of at least ten percent interest in the entity, shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license or registration, the board shall require each applicant to submit to a state and nationwide criminal history background record check. The nationwide criminal history background record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history background record check are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. A criminal history background record check is not required under this section if an applicant for registration has previously been the subject of a state and nationwide criminal history background record check, has held a registration issued by the board within the sixty days immediately preceding the application, and is applying for a new registration due solely to a change in employment. A nationwide criminal history background record check is not required under this section if an applicant for licensure or registration provides to the board the results of a nationwide criminal history background record check performed by the federal bureau of investigation at the request of another state and if the nationwide criminal history background record check was performed within the sixty days immediately preceding the date of the application. A state criminal history background record check is not required under this section if an applicant for registration provides to the board the results of a state criminal history background record check performed by the state in which the applicant currently resides and if the state criminal history background record check was performed within the sixty days immediately preceding the date of the application.

Approved March 19, 2009

Filed March 19, 2009

CHAPTER 374**HOUSE BILL NO. 1102**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

AN ACT to amend and reenact section 43-30-11 of the North Dakota Century Code, relating to the renewal period for private investigative or security licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-11 of the North Dakota Century Code is amended and reenacted as follows:

43-30-11. Renewal of licenses. A license to provide private investigative or security services ~~is valid for a two-year period, must be renewed on an annual basis ending on September thirtieth of each odd-numbered year.~~ must be renewed on an annual basis ending on September thirtieth of each odd-numbered year. License fees must be prorated for the portion of each license period the license is in effect.

Approved March 5, 2009

Filed March 5, 2009

CHAPTER 375**HOUSE BILL NO. 1103**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

AN ACT to amend and reenact subsection 8 of section 43-30-16 of the North Dakota Century Code, relating to the initial and renewal registration fees for private investigative services and private security services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 43-30-16 of the North Dakota Century Code is amended and reenacted as follows:

8. The initial registration fee to provide private investigative service or private security service may not exceed ~~twenty~~ twenty-five dollars. The fee for the renewal of a registration to provide private investigative service or private security service may not exceed ~~five~~ twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

Approved March 5, 2009
Filed March 5, 2009

CHAPTER 376**HOUSE BILL NO. 1145**

(Human Services Committee)

(At the request of the State Board of Psychologist Examiners)

AN ACT to create and enact a new section to chapter 43-32 of the North Dakota Century Code, relating to licensing of psychologists; to amend and reenact sections 43-32-01, 43-32-08.1, 43-32-13, 43-32-17, 43-32-20, 43-32-20.1, and 43-32-27, subsection 1 of section 43-32-27.1, and section 43-32-30 of the North Dakota Century Code, relating to licensing of psychologists and the practice of psychology; and to repeal section 43-32-19 of the North Dakota Century Code, relating to licensing of psychologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-01 of the North Dakota Century Code is amended and reenacted as follows:

43-32-01. Definitions.

1. "Board" means the North Dakota state board of psychologist examiners.
2. "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.
3. "Industrial-organizational psychology" means the provision of psychological research services or consultation services to a group or an organization. The term does not include the delivery or supervision of services to individuals who are themselves, rather than the group or organization, the intended beneficiaries of the services, regardless of the source or extent of payment for services rendered.
4. "Industrial-organizational psychology resident" means an individual who has met the requirement of subdivision b of subsection 2 of section 43-32-20, is involved in supervised employment in industrial-organizational psychology, and has registered with the board.
5. "Licensee" means an industrial-organizational psychologist or a psychologist.
6. "Practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, biofeedback, behavior analysis and therapy, clinical applications of hypnosis, and other therapeutic

techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes providing psychological services to individuals, families, groups, organizations, institutions, and the public regardless of whether payment is received for services rendered. The term includes supervising others who are engaged in the practice of psychology.

- 6- 7. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.
- 7- 8. "Psychology resident" means an individual who has ~~received from a school or college a doctorate degree in a program of study substantially psychological in nature, and who met the requirement of subdivision b of subsection 1 of section 43-32-20,~~ is involved in supervised psychological employment, and has registered with the board.
- 8- 9. "School or college" means any university or other institution of higher learning which is accredited by a regional accrediting association, offering a full-time graduate course of study in industrial-organizational psychology or psychology.

SECTION 2. AMENDMENT. Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08.1. Continuing education requirements. The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter if the licensee fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

SECTION 3. AMENDMENT. Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and fee. Before January first of each year, every licensee shall pay to the secretary of the board an annual license fee determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of payment of the annual license fee, shall issue the licensee a certificate of annual license. An individual may not hold out as an industrial-organizational psychologist or a psychologist until the annual license fee is paid. The board may deny renewal of the license of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee at the address on file with the board.

SECTION 4. AMENDMENT. Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

43-32-17. License required for practice - Titles.

1. Except as otherwise provided under this chapter, a person may not engage in the practice of psychology ~~or represent that person to be a psychologist in this state unless that person is an individual who is~~

licensed as a psychologist or is registered as a psychology resident under this chapter. Except as otherwise provided by this chapter, a person may not engage in the practice of industrial-organizational psychology or represent that person to be an industrial-organizational psychologist in this state unless that person is an individual who is licensed as a psychologist or an industrial-organizational psychologist or is registered as a psychology resident or industrial-organizational psychology resident under this chapter.

2. A psychologist person may not use the title "psychologist" or similar title in conjunction with the practice of psychology. An industrial-organizational psychologist unless that person is licensed as a psychologist. A person may not use the title titles "industrial psychologist", "organizational psychologist", or "industrial-organizational psychologist" in conjunction with the practice of industrial-organizational psychology. An industrial-organizational psychologist may not use the title "psychologist" or similar title representing that the individual unless that person is licensed as a psychologist or industrial-organizational psychologist.
3. A person may not use the title "psychology resident" or similar title unless that person is registered as a psychology resident. A person may not use the titles "industrial psychology resident", "organizational psychology resident", or "industrial-organizational psychology resident" unless that person is registered as a psychology resident or industrial-organizational psychology resident.

SECTION 5. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Licensing applicant licensed in other jurisdictions. The board may grant a license to an applicant, licensed in good standing in another jurisdiction, who passes the oral examination on the law and rules regulating the practice of psychology and industrial-organizational psychology, and meets one of the following requirements:

1. The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state.
2. The applicant holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.

SECTION 6. AMENDMENT. Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20. Licensing - Written and oral examination - Qualifications of applicants. The board shall issue a license to each applicant who files an application upon a form and in a manner the board prescribes, submits the required fee, and ~~demonstrates to the board that the applicant~~ meets the requirements of subsection 1 or 2.

1. An applicant for licensure as a psychologist shall demonstrate ~~the applicant~~ all of the following:

- a. ~~Will~~ The applicant will adhere to the American psychological association ethical principles of psychologists and code of conduct, ~~1992, or revised editions~~ if adopted by the board by rule.
 - b. ~~Has~~ The applicant has received, from an ~~accredited~~ a school or college as defined by this chapter a doctorate degree in a program of studies ~~substantially psychological in nature~~ which meets any of the following requirements:
 - (1) The program is accredited by the American psychological association or the Canadian psychological association.
 - (2) The program is designated as a doctoral program in psychology by the association of state and provincial psychology boards.
 - (3) The program is accredited as a doctoral program in psychology by an accrediting body approved by the board by rule.
 - c. ~~Has~~ The applicant has passed the examinations, written, oral, or both, as the board determines necessary.
 - d. ~~Has~~ The applicant has completed at least two full years of supervised professional experience, one year of which must be an internship program, and one year of which ~~must~~ may be postdoctoral. Both years of experience must comply with the board's rules.
2. An applicant for licensure as an industrial-organizational psychologist shall demonstrate ~~the applicant~~ all of the following:
- a. ~~Will~~ The applicant will adhere to the American psychological association ethical principles of psychologists and code of conduct, ~~1992, or revised editions~~ if adopted by the board by rule.
 - b. ~~Has~~ The applicant has received, from a school or college, a doctorate degree in a program of studies ~~substantially psychological in nature~~ accredited by the American psychological association or an accrediting body approved by the board by rule.
 - c. ~~Has~~ The applicant has passed the examinations, written, oral, or both, as the board determines necessary.
 - d. ~~Has~~ The applicant has completed the professional experience requirements established by the board. The requirements may not exceed the professional experience requirements for psychologists. If the professional experience requirements include a supervised experience requirement:
 - (1) The board must allow an applicant to submit to the board a personalized plan for supervised experience which may include distance-supervision by a qualified industrial-organizational psychologist.

- (2) The board may adopt rules to establish who is qualified to perform supervision, supervision requirements, and reporting.

SECTION 7. AMENDMENT. Section 43-32-20.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20.1. Postdoctoral supervised psychological employment. This section applies to postdoctoral supervised ~~psychological~~ psychology and industrial-organizational psychology employment in the practice of psychology and industrial-organizational psychology. Supervision may only be performed by a psychologist or industrial-organizational psychologist with a competency in supervision in professional psychology in the area of practice being supervised.

Supervision of an applicant for ~~psychologist licensure~~ must include at least two hours of regularly scheduled direct supervision a week for full-time employment, one hour of which must be with the supervisor on a one-to-one basis, either face-to-face or through distance communications. The remaining hour may be with other ~~mental health~~ professionals designated by the supervisor and competent in the area of practice being supervised. ~~The board may approve an exception to the weekly supervision requirement for a week during which the supervisor was ill or otherwise unable to provide supervision.~~ The board may prorate the two hours per week of supervision for individuals preparing for licensure on a part-time basis.

The board may adopt rules regarding postdoctoral psychology and industrial-organizational psychology supervision requirements and reporting.

SECTION 8. AMENDMENT. Section 43-32-27 of the North Dakota Century Code is amended and reenacted as follows:

43-32-27. Denial - Revocation or suspension of license - Grounds.

1. The board, after notice, hearing, and an affirmative vote of at least a majority of board members, may withhold, deny, revoke, or suspend any license issued or applied for under this chapter and may otherwise discipline a licensee or an applicant upon proof the applicant or licensee:
 - a. Has been convicted of an offense determined by the board to have a direct bearing upon an individual's ability to serve the public as a psychologist or industrial-organizational psychologist, or if the board finds, after the conviction of any offense, that an individual is not sufficiently rehabilitated under section 12.1-33-02.1.
 - b. Is using any narcotic or alcoholic beverage to an extent or in a manner dangerous to the applicant or licensee, any other person, or the public, or to an extent that the use impairs the applicant's or licensee's ability to perform the practice of psychology or industrial-organizational psychology with safety to the public unable to practice psychology with reasonable skill and safety to clients or patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.

- c. Has impersonated another individual holding a psychology or industrial-organizational psychology license or allowed another person to use the licensee's license.
 - d. Has used fraud or deception in applying for a license or in taking an examination under this chapter.
 - e. Has allowed the licensee's name or license issued under this chapter to be used in connection with any person who performs psychological services outside of the area of that person's training, experience, or competence.
 - f. Is legally adjudicated insane or mentally incompetent. The record of the adjudication is conclusive evidence of that fact.
 - g. Has engaged in any form of unethical conduct as defined in ethical principles of psychologists and code of conduct as ~~adopted and published by~~ of the American psychological association, ~~1992, or revised editions~~ if adopted by the board by rule.
 - h. Has become grossly negligent in the practice of psychology or industrial-organizational psychology.
 - i. Has willfully or negligently violated this chapter.
 - j. Has engaged in an act in violation of rules adopted by the board.
 - k. Has had a license revoked or suspended or was disciplined in another jurisdiction.
2. An individual whose license has been revoked under this section may not reapply for licensure ~~after~~ for at least two years ~~have elapsed from~~ after the date of revocation.

SECTION 9. AMENDMENT. Subsection 1 of section 43-32-27.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person aggrieved by the actions of a licensee may file a written complaint with the board citing the specific allegations of misconduct by the licensee. The board shall notify the licensee of the complaint and request a written response from the licensee. The board may establish procedural exceptions for processing multiple complaints from the same complainant.

SECTION 10. AMENDMENT. Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

43-32-30. Persons exempt from this chapter. This chapter does not apply to:

1. ~~Any individual in the employ of any federal, state, county, or municipal agency, or other political subdivision, or any nonprofit corporation or educational institution presently chartered by this state, insofar as the activities and services of the individual are a part of the duties of the person's office or position with such agency, nonprofit corporation, or institution. This exemption is not available or effective after July 1,~~

~~2004.~~ However, the exemption period may be extended by the board in individual cases if hardship or other good cause is shown by the agency, nonprofit corporation, or institution covered, or if the individual affected has received from a school or college a master's degree in psychology and the individual's activities and services with such agency, nonprofit corporation, or institution are performed under the supervision of a psychologist. After reviewing the exemption under this subsection, the board and the department of human services shall review their definitions and rules for a master's degree in psychology as used in their own credential requirements.

- ~~2.~~ 2. A student or intern pursuing a course of study in psychology or industrial-organizational psychology at a school or college, if the activities and services are a part of the individual's supervised course of study; provided the and are under the supervision of a licensed psychologist or industrial-organizational psychologist. The student or intern does shall not use the title "psychologist" or "industrial-organizational psychologist" and the student or intern status is shall be clearly stated.
- ~~3.~~ 2. A nonresident licensed or certified in the state of the individual's residence who does not practice psychology or industrial-organizational psychology in this state for a period of more than thirty days in any calendar year.
- ~~4.~~ 3. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology or industrial-organizational psychology unless the lecturer is licensed under this chapter.
- ~~5.~~ 4. An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
- ~~6.~~ 5. A person certified, licensed, or registered in this state in another health care profession, the or as a member of the clergy functioning in a ministerial capacity, whose scope of practice of which is consistent with that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological services.
- ~~7.~~ 6. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
- ~~8.~~ 7. A person employed by an agency, a nonprofit corporation, or an institution if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person

continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.

9. ~~A psychology resident performing services supervised as provided under section 43-32-20.1.~~

SECTION 11. REPEAL. Section 43-32-19 of the North Dakota Century Code is repealed.

Approved April 24, 2009

Filed April 29, 2009

CHAPTER 377

HOUSE BILL NO. 1437

(Representatives Kreidt, Bellew, Nelson, Pollert, Wieland)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 43-34 of the North Dakota Century Code, relating to criminal history record checks of nursing home administrators; and to amend and reenact subsection 1 of section 43-34-02 and sections 43-34-03, 43-34-05, 43-34-11, and 43-34-12 of the North Dakota Century Code, relating to licensing of nursing home administrators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵¹ **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The state board of examiners for nursing home administrators for applicants for licensure or licensees under chapter 43-34, except that criminal history record checks for licensees need not be made unless required by the board.

SECTION 2. AMENDMENT. Subsection 1 of section 43-34-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Two members of the board must be the state health officer and the executive director of the department of human services or the members' designees.

SECTION 3. AMENDMENT. Section 43-34-03 of the North Dakota Century Code is amended and reenacted as follows:

43-34-03. Qualifications for licensure. The board ~~has authority to~~ may issue licenses to qualified ~~persons~~ individuals entitling ~~them~~ the individuals to serve and practice nursing home administration or otherwise hold themselves out as duly licensed nursing home administrators, and shall establish qualification criteria for such ~~persons~~ individuals by rule. ~~No license may be issued to a person unless the person has met the following conditions:~~

1. ~~The person is at least eighteen years of age, of good moral character, and of sound physical and mental health.~~
2. ~~If the applicant for license is deemed not to be qualified by the board after the initial evaluation and testing, then the board may prescribe a course of instruction and training, which course must be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by nursing homes; laws governing the~~

¹⁵¹ Section 12-60-24 was also amended by section 1 of House Bill No. 1084, chapter 123, section 1 of Senate Bill No. 2152, chapter 379, and section 1 of Senate Bill No. 2162, chapter 422.

operation of nursing homes and the protection of the interests of patients therein; and the elements of good nursing home administration; or have presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a nursing home.

3. The person has passed an examination administered by the board and designed to test for competence in the subject matter referred to in subsection 2.

All persons applying An applicant for a license must meet the conditions and requirements as may be prescribed by the board by rule. However, a person meeting the standards of good moral character, sound physical and mental health, and otherwise suitable, and who was a nursing home administrator during all of the calendar year immediately preceding the calendar year in which the state licensing program becomes effective, may be granted a waiver for a period of two years after July 1, 1969, or until June 30, 1971, whichever is earlier, to allow the person or persons to meet the conditions or requirements as set by this board.

SECTION 4. AMENDMENT. Section 43-34-05 of the North Dakota Century Code is amended and reenacted as follows:

43-34-05. License fees. Each person individual licensed as a nursing home administrator is required to shall pay a license fee in an amount to be fixed by the board, which fee may not exceed one two hundred fifty dollars per annum. Any licensee, or applicant for license, may take a special examination for the purpose of being eligible for reciprocity with other states, upon the payment of an additional fee to be established by the board for that purpose.

SECTION 5. AMENDMENT. Section 43-34-11 of the North Dakota Century Code is amended and reenacted as follows:

43-34-11. Emergency licenses. In the event of the death or other an unexpected removal of a licensed vacancy in a nursing home administrator from the administrator's position, the owner, the governing body, or other appropriate authority of the nursing home may designate an acting administrator to whom the board may issue an emergency license. This emergency license is in force for a period not to exceed ninety days but may be renewed for an additional ninety days by the board upon good cause shown.

SECTION 6. AMENDMENT. Section 43-34-12 of the North Dakota Century Code is amended and reenacted as follows:

43-34-12. Reciprocity with other states Licensure of individuals licensed in other jurisdictions. The board may issue a nursing home administrator's license, without examination, to any person individual who holds a current license as a nursing home administrator from another jurisdiction, provided that if the board finds that the standards for licensure at the time the license was issued in the other jurisdiction were are at least the substantial equivalent of those prevailing in this state at the time of application and that the applicant is otherwise qualified.

SECTION 7. A new section to chapter 43-34 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The board shall require an applicant for licensure under section 43-34-04, 43-34-11, or 43-34-12 to submit to a statewide and nationwide criminal history record check. The board may require any licensee to submit to a statewide and nationwide criminal history check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

Approved April 24, 2009

Filed April 29, 2009

CHAPTER 378**HOUSE BILL NO. 1093**

(Human Services Committee)

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

AN ACT to amend and reenact subsection 4 of section 43-41-02, subsection 4 of section 43-41-04, and subsection 1 of section 43-41-08 of the North Dakota Century Code, relating to the licensing of social workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-41-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Nothing in this chapter prevents the employment of social work designees by hospitals, basic care facilities, or skilled nursing facilities, provided these ~~persons~~ individuals work under the direction of a social worker or social work consultant licensed under this chapter and that the board be notified of the name of the designee's employer and the name of the licensee who is providing direction or consultation to the designees.

SECTION 2. AMENDMENT. Subsection 4 of section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

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 college or university.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that within a four-year period the applicant has successfully completed ~~within four years~~, three thousand hours of 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, or, if an applicant began that supervised clinical social work experience before August 1, 2009, a licensed certified social worker who has two years of experience, a licensed psychologist with a doctorate degree, or a licensed psychiatrist.
 - d. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.

SECTION 3. AMENDMENT. Subsection 1 of section 43-41-08 of the North Dakota Century Code is 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, at the time of initial appointment, licensed social workers₇₁; one of whom must be, at the time of initial appointment, a licensed certified social worker₇₁; one of whom must be, at the time of initial appointment, a licensed independent clinical social worker₇₁ and two of whom must be laypersons. Board members must demonstrate no conflict of interest.

Approved April 21, 2009

Filed April 22, 2009

CHAPTER 379

SENATE BILL NO. 2152

(Human Services Committee)

(At the request of the Marriage and Family Therapy Licensure Board)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; to amend and reenact sections 43-53-01, 43-53-05, 43-53-06, 43-53-07, 43-53-08, 43-53-09, 43-53-10, and 43-53-12 of the North Dakota Century Code, relating to marriage and family therapy licensure and practice; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵² **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The marriage and family therapy licensure board for applicants, licensees, or investigations under chapter 43-53, except that criminal history record checks need not be made unless required by the board.

SECTION 2. AMENDMENT. Section 43-53-01 of the North Dakota Century Code is amended and reenacted as follows:

43-53-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Advertise" includes the issuing or causing to be distributed any card, sign, or device to any person; the causing, permitting, or allowing any sign or marking in or on any building, radio, or television; or advertising by any other means designed to secure public attention.
2. "Associate marriage and family therapist" means an individual who has completed the educational requirements for a marriage and family license and who has successfully passed the licensing examination, but who has not yet successfully completed the supervised work experience requirement for licensure as a marriage and family therapist.
3. "Board" means the North Dakota marriage and family therapy licensure board.
- ~~3.~~ 4. "Licensed marriage and family therapist" means an individual who holds a valid license issued under this chapter.

¹⁵² Section 12-60-24 was also amended by section 1 of House Bill No. 1084, chapter 123, section 1 of House Bill No. 1437, chapter 377, and section 1 of Senate Bill No. 2162, chapter 422.

- 4- 5. "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders.
- 5- 6. "Practice of marriage and family therapy" means the rendering of marriage and family therapy services to individuals, couples, and families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.
- 6- 7. "Qualified supervision" means the supervision of clinical services, in accordance with standards established by the board, by an individual who has been recognized by the board as an approved supervisor.
- 7- 8. "Recognized educational institution" means any educational institution that grants a ~~baccalaureate~~ master's or higher degree that is recognized by the board and by a regional accrediting body, or a postgraduate training institute accredited by the commission on accreditation for marriage and family therapy education.
- 8- 9. "Use a title or description of" means to hold oneself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, calling cards, or other instruments of professional identification.

SECTION 3. AMENDMENT. Section 43-53-05 of the North Dakota Century Code is amended and reenacted as follows:

43-53-05. Board powers and duties.

1. The board shall administer and enforce this chapter. The board shall adopt rules as the board determines necessary.
2. The board shall examine and pass on the qualifications of all applicants and shall issue a license to each successful applicant. The board shall adopt a seal which must be affixed to all licenses issued by the board.
3. The board may authorize expenditures determined necessary to carry out this chapter.
4. ~~Four~~ Three of the members of the board constitute a quorum. The board may employ attorneys, accountants, experts, and other employees as necessary for the proper performance of the board's duties.
5. The board shall adopt a nationally recognized code of ethics for the practice of marriage and family therapy.
6. The board shall establish continuing education requirements for license renewal.

7. The board shall publish an annual list of the names and addresses of all individuals licensed under this chapter.

SECTION 4. AMENDMENT. Section 43-53-06 of the North Dakota Century Code is amended and reenacted as follows:

43-53-06. Licenses.

1. Each individual desiring to obtain a license as a practicing marriage and family therapist shall submit an application to the board, upon such form and in such manner as the board prescribes. An applicant shall furnish evidence that the applicant:
 - a. Is of good moral character;
 - b. Has not engaged in any practice or conduct that would be a ground for ~~revoking a license~~ discipline under this chapter; and
 - c. Is qualified for licensure pursuant to the requirements of this chapter.
2. ~~Before~~ An individual who was actively practicing marriage and family therapy in this state before January 1, 2008, an applicant and whose application is received by the board before January 1, 2010, may be issued a license by the board if the applicant meets the qualifications set forth in subdivisions a and b of subsection 1 and provides evidence to the board that the applicant meets educational and experience qualifications as follows:
 - a. An appropriate graduate degree, as defined by the board, from a regionally accredited institution so recognized at the time of granting such degree.
 - b. At least five years of clinical experience in the practice of marriage and family therapy, and membership or certification by an appropriate professional organization, as defined by the board.
3. ~~After December 31, 2007, an~~ An applicant may be issued a license by the board if the applicant meets the qualifications set forth in subsection 1 and provides satisfactory evidence to the board that the applicant:
 - a. Holds a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution, or a graduate degree in an allied field from a recognized educational institution and graduate level coursework which is equivalent to a master's degree in marriage and family therapy, as determined by the board.
 - b. Has successfully completed two calendar years of work experience in marriage and family therapy under qualified supervision following receipt of a qualifying degree.
 - c. Has passed ~~a national~~ the examination administered or adopted by the board.

4. An applicant may be issued an associate marriage and family therapist license by the board if the applicant meets the qualifications set forth in subsection 1 and has provided the board with satisfactory evidence that the applicant meets the requirements in subdivisions a and c of subsection 3. Associate marriage and family therapists must practice under the supervision of a board qualified supervisor and must obey the same laws and rules as a marriage and family therapist. An associate marriage and family therapist license lasts for one year and may be renewed for up to four additional years.
5. The board may adopt rules concerning reinstatement of lapsed licenses, voluntary termination, or emeritus status.
6. The board may require an applicant for licensure or a licensee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

SECTION 5. AMENDMENT. Section 43-53-07 of the North Dakota Century Code is amended and reenacted as follows:

43-53-07. Examination.

1. The board shall conduct an examination at least once a year at a time and place designated by the board. Examinations may be written or oral as determined by the board. The board may create its own examination or adopt a nationally recognized examination. In any written examination each applicant must be designated so that the applicant's name is not disclosed to the board until the examination has been graded. Examinations must include questions in such theoretical and applied fields as the board determines most suitable to test an applicant's knowledge and competence to engage in the practice of marriage and family therapy. An applicant is deemed to have passed an examination upon affirmative vote of at least four members of the board.
2. Any applicant who fails an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.

SECTION 6. AMENDMENT. Section 43-53-08 of the North Dakota Century Code is amended and reenacted as follows:

43-53-08. Reciprocal licenses License by endorsement. The board shall issue a license by examination of credentials to any applicant licensed or certified as a marriage and family therapist in another state for which the requirements for the license or certificate are equivalent to or exceed the requirements of this state, provided the applicant submits an application on forms prescribed by the board and pays the original licensure fee prescribed by this chapter.

SECTION 7. AMENDMENT. Section 43-53-09 of the North Dakota Century Code is amended and reenacted as follows:

43-53-09. Fees. A fee, as determined by the board, must be paid to the board for original licensure. A fee may also be established for the licensure examination. A license is valid for two years and must be renewed biennially, with the renewal fee being determined by the board. The board may also establish a fee for a duplicate license. Any applicant for renewal of a license that has expired must be required to pay a ~~registration~~ late fee determined by the board. The board may also establish a fee for continuing education sponsors. The fees established under this section must be adequate to establish and maintain the operation of the board. Payment of a late fee is not a defense to a charge of practicing without a license.

SECTION 8. AMENDMENT. Section 43-53-10 of the North Dakota Century Code is amended and reenacted as follows:

43-53-10. Disciplinary proceedings.

1. The board may deny, ~~revoke, or suspend~~ an application or institute a disciplinary proceeding concerning a license granted under this chapter licensee on the following grounds:
 - a. Conviction by a court of competent jurisdiction of an offense that the board determines to be of such a nature as to render the licensee unfit to practice marriage and family therapy. The board ~~shall~~ may compile, maintain, and publish a list of such offenses.
 - b. Violation of ethical standards of such a nature as to render the licensee unfit to practice marriage and family therapy. The board shall publish such ethical standards.
 - c. Fraud or misrepresentation in obtaining a license.
 - d. Any just and sufficient cause that renders a licensee unfit to practice marriage and family therapy.
2. ~~A licensee~~ An applicant may be denied a license, and a licensee may be suspended, or revoked, placed on supervised or unsupervised probation, required to take corrective action, attend continuing education, or fined up to two hundred dollars per violation for the reasons set forth in subsection 1. A licensee licensee may not be denied, suspended, or revoked disciplined under this section except by majority vote of the full board, notwithstanding any other provision of this chapter. The board may also charge the licensee with its reasonable expenses and reasonable attorney fees for any disciplinary matter resulting in disciplinary action.
3. Any person may file a complaint with the board seeking ~~denial, suspension, or revocation~~ discipline of a license issued or to be issued by the board licensee. The complaint must be in a form prescribed by the board and must be verified under oath by the complainant or a duly authorized officer of a complainant. If the board determines that a complaint alleges facts that, if true, would require ~~denial, revocation, or suspension~~ discipline of a license licensee, the board promptly shall institute a hearing. If the board determines a complaint does not state facts warranting a hearing, the complaint may be dismissed. The board may institute a hearing for ~~denial, suspension, or revocation~~ discipline of a licensee licensee on its own motion.

4. Any person may be permitted to intervene and participate in board hearings on denial, suspension, or revocation of licenses upon a showing of an interest in such proceeding.
5. Any individual ~~whose license~~ who has been suspended or revoked may not apply to the board for vacation of the suspension until the time specified in the board's order is complete or for reinstatement of the license until one year after the board's order or such other time as specified in the board's order is complete.

SECTION 9. AMENDMENT. Section 43-53-12 of the North Dakota Century Code is amended and reenacted as follows:

43-53-12. Penalty. Any person who ~~violates practices without a license in violation of~~ this chapter is guilty of a class B misdemeanor.

Approved April 30, 2009
Filed May 1, 2009

CHAPTER 380**HOUSE BILL NO. 1361**

(Representatives Grande, Kasper, Ruby)
(Senators Klein, J. Lee, Triplett)

AN ACT to create and enact subsection 9 to section 43-55-08 and two new sections to chapter 43-55 of the North Dakota Century Code, relating to professional employer organizations; to amend and reenact sections 43-55-03 and 43-55-05 of the North Dakota Century Code, relating to licensing requirements for professional employer organizations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 9 to section 43-55-08 of the North Dakota Century Code is created and enacted as follows:

9. Upon request of the secretary of state or attorney general, a professional employer organization promptly shall provide an audited financial statement verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located.

SECTION 2. AMENDMENT. Section 43-55-03 of the North Dakota Century Code is amended and reenacted as follows:

43-55-03. Licensing requirements.

1. ~~After October 4, 2007,~~ a A person may not provide, advertise, or otherwise hold itself out as providing professional employer services, unless the person is licensed under this chapter. A person engaged in the business of providing professional employer services shall obtain a license regardless of its use of the term or conducting business as a "professional employer organization", "staff leasing company", "registered staff leasing company", "employee leasing company", "administrative employer", or any other name.
2. Each applicant for licensure shall provide the secretary of state with the following information:
 - a. The name of the professional employer organization and any name under which the professional employer organization intends to conduct business in this state.
 - b. The designation of organization of the applicant whether domestic or foreign; a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, sole proprietor, or any other person subject to a governing statute; and the jurisdiction of origin of the organization.

- c. The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state.
 - d. The professional employer organization's taxpayer or employer identification number.
 - e. The date of the end of the applicant's fiscal year.
 - f. A list ~~by jurisdiction of each name under~~ of jurisdictions in which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities.
 - g. A statement of ownership, which must include the name and address of any person that owns or controls twenty-five percent or more of the equity interests of the professional employer organization.
 - h. A statement of management, which must include the name and address of any individual who serves as president, chief executive officer, or otherwise has the authority to act as a senior executive officer of the professional employer organization.
 - i. ~~A financial statement, verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located, as of a date not earlier than one hundred eighty days before the date submitted to the secretary of state, which is prepared in accordance with generally accepted accounting principles. The financial statement must set forth the financial condition of the professional employer organization over the most recent twelve-month operating period and must clearly define the working capital of the professional employer organization. A professional employer organization that has not had sufficient operating history to have a financial statement based upon at least twelve months of operating history shall meet the financial capacity requirements under this chapter and present a financial statement bond as provided under this subdivision for the entire period of its operation~~ section 43-55-05.
 - j. A copy of the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount as provided under section 43-55-05.
3. A license issued under this section is valid for one year and may be renewed within sixty days before the expiration of the license by submitting to the secretary of state:
 - a. The information required in subsection 2;
 - b. The license fee provided in section 43-55-04; and
 - c. A bond as provided under section 43-55-05.

4. a. Within sixty days before the expiration of a license, the licensee may apply to renew the license by submitting to the secretary of state the information required in subsection 2 along with the required license fee.
 - b. For the purposes of a renewal application, the audited and verified financial statement may be based on the twelve months of operating history before the close of the fiscal year immediately preceding the renewal date of the license. A professional employer organization that is unable to obtain an audited and verified financial statement before the expiration of a license may submit with the application for renewal:
 - (1) A written request for an extension to submit the audited and verified financial statement by a specific date within six months after the license is renewed and a verified statement, signed by an individual authorized by the professional employer organization, affirming that the professional employer organization has continuously maintained sufficient working capital to meet the financial capacity requirements under this chapter; or
 - (2) A bond with a minimum value of one hundred thousand dollars to be held by the secretary of state to secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.
 - e. The secretary of state shall suspend the license of a professional employer organization if the professional employer organization fails to submit the audited and verified financial statement by the extended date provided under subdivision b.
5. A person applying for licensure or a renewal of licensure shall maintain continuously its organization's applicable records current and in good standing as otherwise required by law.
 6. 5. The secretary of state shall maintain a list of professional employer organizations licensed under this chapter.

SECTION 3. AMENDMENT. Section 43-55-05 of the North Dakota Century Code is amended and reenacted as follows:

43-55-05. Financial capability Bond.

1. A professional employer organization shall maintain ~~either:~~
4. A minimum working capital of one hundred thousand dollars as reflected ~~in the financial statement submitted to the secretary of state with the license application and each annual renewal; or~~
2. A a bond with a minimum value of the greater amount of one hundred thousand dollars or five percent of the total wages reported on the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to

the secretary of state but not to exceed five hundred thousand dollars as reflected in the financial statement submitted to the secretary of state.

2. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount of one hundred thousand dollars.
3. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due. A bond provided under this section may not be included for the purpose of calculation of the minimum net worth required by this section.
4. Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the secretary of state at least forty-five days before cancellation or nonrenewal.

SECTION 4. Two new sections to chapter 43-55 of the North Dakota Century Code are created and enacted as follows:

Confidential records.

1. The social security number or federal tax identification number disclosed or contained in an application filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of an application is released to the public.
2. All audited financial reports and the employers' quarterly contribution and wage report to job service North Dakota are confidential except to the extent necessary for the proper administration of this chapter by the secretary of state or the attorney general.

Interagency cooperation. A state agency, in performing duties under other laws that affect the regulation of professional employer organizations, shall cooperate with the secretary of state as necessary to administer and enforce this chapter.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 2009
Filed April 22, 2009