

OFFICES AND OFFICERS

CHAPTER 393

HOUSE BILL NO. 1235

(Representatives Dockter, Bosch, Heinert, Stemen)
(Senators Cleary, K. Roers)

AN ACT to create and enact a new section to chapter 44-01 of the North Dakota Century Code, relating to term beginning dates for elected state government officials.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-01 of the North Dakota Century Code is created and enacted as follows:

Elected state officers - Date to qualify.

The agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer shall qualify on the first day of December next succeeding their election and shall enter upon the discharge of the duties of their respective offices.

Approved April 6, 2023

Filed April 10, 2023

CHAPTER 394

SENATE BILL NO. 2232

(Senators Luick, Larson)
(Representative Strinden)

AN ACT to create and enact a new subsection to section 44-04-18.7 of the North Dakota Century Code, relating to exempting crime scene images of minors; and to amend and reenact section 44-04-06, subsection 5 of section 44-04-19.1, subsection 4 of section 44-04-20, and subsection 1 of section 44-04-21.1 of the North Dakota Century Code, relating to law violations and open record and open meeting laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-06 of the North Dakota Century Code is amended and reenacted as follows:

44-04-06. Peace officers to report law violations.

The state's attorney, assistant state's attorney, sheriff, deputy sheriff, or peace officer of any county, township, city in this state, having any evidence, knowledge, or notice of any violation of any liquor, ~~gambling, cigarette, snuff, pool hall, bawdyhouse, prostitution, white slave, or habit-forming drug~~ laws of North Dakota shall investigate and seek evidence of the violation and the names of witnesses by whom the violation may be proved. ~~Any~~ A peace officer shall report the information to the state's attorney of the county in which the violation occurs and shall assist the state's attorney in the prosecution of the violators of said laws.

²¹⁶ **SECTION 2.** A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise provided by law, descriptions of crime scene images that include a minor or a minor victim or parts of a record containing such descriptions are exempt.

SECTION 3. AMENDMENT. Subsection 5 of section 44-04-19.1 of the North Dakota Century Code is amended and reenacted as follows:

5. "Attorney consultation" means any discussion between the members of a governing body and its attorney in instances in which the governing body seeks or receives the attorney's advice regarding and in anticipation of reasonably predictable or pending civil or criminal litigation or adversarial administrative proceedings or to receive its attorney's advice and guidance on the legal risks, strengths, and weaknesses of an action of a public entity which, if held in public, would have an adverse fiscal effect on the entity. All other discussions beyond the attorney's advice and guidance must be made in the open, unless otherwise provided by law. All statements made by a participant or between participants during an executive session held for the

²¹⁶ Section 44-04-18.7 was also amended by section 2 of House Bill No. 1481, chapter 236, and section 1 of House Bill No. 1262, chapter 397.

purpose of attorney consultation are exempt if the statements relate to the subject for which attorney consultation was established. Mere presence or participation of an attorney at a meeting is not sufficient to constitute attorney consultation.

SECTION 4. AMENDMENT. Subsection 4 of section 44-04-20 of the North Dakota Century Code is amended and reenacted as follows:

4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, the county auditor or designee of the county for all other bodies, ~~or.~~ If the public entity has a website, notice also must be posted on the public entity's website. This subsection does not apply to meetings of the legislative assembly or any committee thereof.

SECTION 5. AMENDMENT. Subsection 1 of section 44-04-21.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any interested person may request an attorney general's opinion to review a written denial of a request for records under section 44-04-18, a denial of access to a meeting under section 44-04-19, or other alleged violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 by any public entity other than the legislative assembly or any committee thereof. A request made under this section must be made within thirty days of the alleged violation, except that a request based on allegations that a meeting occurred without the notice required by section 44-04-20, must be made within ninety days of the alleged violation. In preparing an opinion under this section, the attorney general has discretion to obtain and review a recording made under section 44-04-19.2. The attorney general may request and obtain information claimed to be exempt or confidential for the purpose of determining whether the information is exempt or confidential. Any such information may not be released by the attorney general and may be returned to the provider of the information. The attorney general shall issue to the public entity involved an opinion on the alleged violation, which may be a summary opinion, unless the request is withdrawn by the person requesting the opinion or a civil action has been filed involving the possible violation. The attorney general may decline to issue an opinion if the person requesting the opinion has made more than one request within the last thirty days or more than five requests for opinions in twelve months. If the request pertains to a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1, the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.

Approved March 27, 2023

Filed March 28, 2023

CHAPTER 395

HOUSE BILL NO. 1054

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

AN ACT to amend and reenact subsections 1 and 5 of section 44-06.1-20 of the North Dakota Century Code, relating to notary commissions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 5 of section 44-06.1-20 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual qualified under subsection 2 may apply to the secretary of state for a commission as a notary public. The applicant shall comply with and provide on a form prescribed by the secretary of state, the information required by the secretary of state and submit the required application fee of thirty-six dollars.
5. On compliance with subsections 1, 2, 3, and 4, the secretary of state shall issue a notary public commission to an applicant for a term of four years, unless sooner removed by the secretary of state. The notary shall post the commission in a conspicuous place in the notary's office or place of employment. A notary public commission may be renewed up to sixty days before the commission's expiration date by reapplying in the same manner as required for an original commission.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 396

SENATE BILL NO. 2047

(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 9 of section 44-04-17.1 of the North Dakota Century Code, relating to the definition of meeting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

9. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through any electronic means, of:
 - (1) A quorum of the members of the governing body of a public entity regarding public business; or
 - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of the smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" does not include:
 - (1) A chance or social gathering at which public business is not considered;
 - (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group;
 - (3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong;
 - (4) Training seminars at which no other public business is considered or discussed; and
 - (5) Administration of examinations by a regulatory board when no other public business is considered or discussed.
- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.

-
- d. Notwithstanding subdivisions a and b, "meeting" does not include any meeting of the judicial branch or a committee or workgroup of the judicial branch. Such meetings are governed by section 5 of article XI of the Constitution of North Dakota.

Approved April 10, 2023

Filed April 11, 2023

CHAPTER 397

HOUSE BILL NO. 1262

(Representatives O'Brien, Nelson, Pyle, Wagner)
(Senators Cleary, Lee)

AN ACT to amend and reenact subsection 9 of section 44-04-18.7 of the North Dakota Century Code, relating to exempt records and body camera images.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁷ **SECTION 1. AMENDMENT.** Subsection 9 of section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

9. An image taken ~~by a law enforcement officer or a firefighter~~ with a body camera or similar device and which is taken in a private place is an exempt record.

Approved March 30, 2023

Filed April 3, 2023

²¹⁷ Section 44-04-18.7 was also amended by section 2 of House Bill No. 1481, chapter 236, and section 2 of Senate Bill No. 2232, chapter 394.

CHAPTER 398

HOUSE BILL NO. 1463

(Representatives Porter, Bosch, D. Johnson, Lefor, Schauer)

AN ACT to amend and reenact section 44-04-21 of the North Dakota Century Code, relating to legislative voting requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-21 of the North Dakota Century Code is amended and reenacted as follows:

44-04-21. Open voting at public meetings required - Results recorded in minutes.

1. Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the provisions of section 44-04-19 must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. Procedural votes must be recorded roll call votes upon the request of any member of a governing body holding a meeting subject to this section. As used in this section, "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body.
2. Minutes must be kept of all open meetings and are records subject to section 44-04-18. The minutes must include, at a minimum:
 - a. The names of the members attending the meeting;
 - b. The date and time the meeting was called to order and adjourned;
 - c. A list of topics discussed regarding public business;
 - d. A description of each motion made at the meeting and whether the motion was seconded;
 - e. The results of every vote taken at the meeting; and
 - f. The vote of each member on every recorded roll call vote.

Notwithstanding subsection 8 of section 44-04-18, the disclosure of minutes kept under this subsection may not be conditioned on the approval of the minutes by the governing body.

3. Subsection 1 does not apply to a nonprocedural vote relating to the consideration of an amendment by a legislative committee or the legislative assembly during a legislative session, unless otherwise required by legislative rule.

Approved April 11, 2023

Filed April 17, 2023

CHAPTER 399

HOUSE BILL NO. 1083

(Judiciary Committee)

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

AN ACT to amend and reenact section 44-06.1-13.1 of the North Dakota Century Code, relating to the adoption of the Revised Uniform Law on Notarial Acts (2021).

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

44-06.1-13.1. Notarial ~~Act~~act performed for remotely located individual.

1. As used in this section, unless the context otherwise requires:
 - a. "Communication technology" means an electronic device or process that:
 - (1) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and
 - (2) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.
 - b. "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.
 - c. "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.
 - d. "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.
 - e. "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection 3.
2. A remotely located individual may comply with section 44-06.1-05 by using communication technology to appear before a notary public.
3. A notary public located in this state may ~~perform a notarial act using~~ use communication technology to perform a notarial act for a remotely located individual if:

- a. The notary public:
 - (1) Has personal knowledge under subsection 1 of section 44-06.1-06 of the identity of the remotely located individual;
 - (2) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under subsection 2 of section 44-06.1-06 or this section; or
 - (3) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;
- b. The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;
- c. The notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and
- d. For a remotely located individual located outside the United States:
 - (1) The record:
 - (a) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or
 - (b) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and
 - (2) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.
4. A notary public located in this state may use communication technology under subsection 3 to take an acknowledgment of a signature on a tangible record physically present before the notary public if the record is displayed to and identified by the remotely located individual during the audiovisual recording under subdivision c of subsection 3.
5. The requirement under subdivision b of subsection 3 for the performance of a notarial act with respect to a tangible record not physically present before the notary public is satisfied if:
 - a. The remotely located individual:
 - (1) During the audiovisual recording under subdivision c of subsection 3, signs:
 - (a) The record; and

- (b) A declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is a part or to which it is attached is the same record on which (name of notary public), a notary public, performed a notarial act and before whom I appeared by means of communication technology on (date).

Signature of remotely located individual

Printed name of remotely located individual; and

- (2) Sends the record and declaration to the notary public not later than three days after the notarial act was performed; and

b. The notary public:

- (1) In the audiovisual recording under subdivision c of subsection 3, records the individual signing the record and declaration; and

- (2) After receipt of the record and declaration from the individual, executes a certificate of notarial act under section 44-06.1-14 which must include a statement in substantially the following form:

I (name of notary public) witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

6. A notarial act performed in compliance with subsection 5 complies with subdivision a of subsection 1 of section 44-06.1-14 and is effective on the date the remotely located individual signed the declaration under subparagraph b of paragraph 1 of subdivision a of subsection 5.
7. Subsection 5 does not preclude use of another procedure to satisfy subdivision b of subsection 3 for a notarial act performed with respect to a tangible record.
8. A notary public located in this state may use communication technology under subsection 3 to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by another law of this state, the notary public:
- a. Identifies the individual under subdivision a of subsection 3;
 - b. Creates or causes the creation under subdivision c of subsection 3 of an audiovisual recording of the individual taking the oath or affirmation; and
 - c. Retains or causes the retention under subsection 11 of the recording.
9. If a notarial act is performed under this section, the certificate of notarial act required by under section 44-06.1-14 and the short-form certificate provided

~~in~~ under section 44-06.1-19 must indicate the notarial act was performed using communication technology.

~~5-10.~~ A short-form certificate ~~provided in~~ under section 44-06.1-19 for a notarial act subject to this section is sufficient if it:

- a. Complies with the rules adopted under subdivision a of subsection ~~813~~; or
- b. Is in the form ~~provided in~~ under section 44-06.1-19 and contains a statement in substantially ~~as follows~~ the following form: "This notarial act involved the use of communication technology."

~~6-11.~~ A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audiovisual recording created under subdivision c of subsection 3 or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision d of subsection ~~813~~, the recording must be retained for ~~a period of~~ at least ten years ~~after the recording is made~~.

~~7-12.~~ Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the secretary of state that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the secretary of state has established standards under subsection ~~813~~ and section 44-06.1-25 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

~~8-13.~~ In addition to adopting rules under section 44-06.1-25, the secretary of state may adopt rules ~~under this section~~ regarding performance of a notarial act under this section. The rules may:

- a. Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
- b. Establish standards for communication technology and identity proofing;
- c. Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; ~~and~~
- d. Establish standards and a period for the retention of an audiovisual recording created under subdivision c of subsection 3; and
- e. Prescribe methods for a notary public to confirm under subsections 4 and 5 the identity of a tangible record.

~~9-14.~~ Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:

- a. The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the national association of secretaries of state;

- b. Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and
- c. The views of governmental officials and entities and other interested persons.

~~40-15.~~ By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording created under subdivision c of subsection 3, the provider of the communication technology, identity proofing, or storage appoints the secretary of state as the provider's agent for service of process in any civil action in this state related to the notarial act.

Approved March 15, 2023

Filed March 16, 2023

CHAPTER 400

HOUSE BILL NO. 1155

(Representatives Heilman, Christensen, Kasper, Koppelman, Prichard, Rios, M.
Ruby, Vetter)
(Senators Clemens, Larson, Paulson, Wobbema)

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to sanctuary status.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Prohibition - Sanctuary - Immigration - Void.

1. Notwithstanding any other provision of law, the state, a political subdivision, or institution of higher education under the supervision of the state board of higher education or any agent or employee of the state, a political subdivision, or the institution of higher education may not adopt or implement a policy, order, or ordinance that:
 - a. Limits or prohibits an individual from communicating or cooperating with federal agencies or officials to verify or report the immigration status of an individual; or
 - b. Grants a noncitizen unlawfully present in the United States the right to lawful presence or status within the state, a political subdivision, or the institution of higher education.
2. Any policy, order, or ordinance adopted in violation of this section is void.

Approved April 7, 2023

Filed April 10, 2023

CHAPTER 401

SENATE BILL NO. 2124

(Senators Davison, Dever, Hogan)
(Representatives Heinert, Sanford)

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to meal reimbursement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

2. For travel within the state, the following rates for each quarter of any twenty-four-hour period must be used:
 - a. First quarter is from six a.m. to twelve noon and the sum must be ~~seventy-nine~~ nine dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be ~~tenfourteen~~ fourteen dollars and ~~fifty~~ no cents.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be ~~seventeen~~ twenty-two dollars and ~~fifty~~ no cents.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed an amount established by policy by the director of the office of management and budget plus any additional applicable state or local taxes. The director shall establish a policy to set the lodging reimbursement at an amount equal to ninety percent of the rate established by the United States general services administration for lodging reimbursement in this state. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

Approved April 12, 2023

Filed April 13, 2023