

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 435

SENATE BILL NO. 2349  
(Wenstrom)

### OCCUPATIONAL LICENSING

AN ACT to amend and reenact section 43-01-02, subsection 1 of section 43-02.1-02, subsection 1 of section 43-02.1-03, subsection 1 of section 43-02.1-04, subsection 1 of section 43-02.1-05, section 43-09-02, subsection 8 of section 43-11-16, section 43-12.1-05, subsection 11 of section 43-17-31, subsection 2 of section 43-23-08, sections 43-25-07, 43-26-04, 43-28-04, 43-28-11, 43-28-18, 43-29-02, 43-30-05, 43-31-07, 43-32-02, 43-32-18, 43-32-20, 43-34-02, 43-35-03, 43-36-02, and subsection 2 of section 43-37-05 of the North Dakota Century Code, relating to occupations, the licensing thereof, restrictions on competition therein, and gubernatorial appointments to regulatory boards and commissions; and to repeal sections 43-11-36 and 43-13-29 of the North Dakota Century Code, relating to setting of fees and prohibition on advertising.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-02. ABSTRACTERS' BOARD OF EXAMINERS - APPOINTMENT - TERM OF OFFICE - VACANCIES. The abstracters' board of examiners shall consist of three members each of whom shall be appointed by the governor for a term of six years, with the terms of office so arranged that one term and only one shall expire on March thirty-first of every odd-numbered year. One member of the board shall be an abstracter ~~recommended by the North Dakota title association~~. Each member of the board shall qualify by taking the oath required of civil officers and shall hold his office until his successor is appointed and qualified. Any vacancy on the board shall be filled by appointment by the governor for the unexpired term.

SECTION 2. AMENDMENT. Subsection 1 of section 43-02.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state board of public accountancy shall consist of five members appointed by the governor from a list of qualified nominees submitted to him by nominating committees formed from the certified public accountants and licensed public accountants in North Dakota. Four members of the board shall be residents of this state who hold certified public accountant certificates issued under the laws of this state and one member of the board shall be a resident of this state who is a licensed public accountant under the laws of this state. The licensed public accountants shall nominate the licensed public accountant member of the board and the certified public accountants shall nominate the certified public accountant members of the board. At the time when the number of licensed public accountants in this state drops below twenty-five, the licensed public accountants will lose their representative on the board, except that the licensed public accountant then serving on the board shall be allowed to complete his term of office. Subsequently, the board shall consist of five certified public accountants. The terms of office shall be so arranged that one term and only one shall expire on June thirtieth of each year. Their successors shall be appointed for terms of five years. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold his office until his successor is appointed and qualified. A vacancy on the board shall be filled by appointment by the governor from a new list of at least three nominees submitted to him by the appropriate nominating committee.

SECTION 3. AMENDMENT. Subsection 1 of section 43-02.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The board shall issue a certificate to practice as a certified public accountant to any person who:
  - a. ~~Is, or in good faith has declared his intention to become, a citizen of the United States;~~
  - b. Is a resident of North Dakota;
  - e- b. Is eighteen years of age or over;
  - d- c. Is of good moral character;
  - e- d. Has had at least four years of public accounting experience on his 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, or is a graduate of an accredited four-year college or university with an academic emphasis in accounting; and

- f- e. Has passed the Uniform Certified Public Accountant Examination together with any additional examination prescribed by the board;

provided, however, that the board may refuse to grant a certificate if such person is at the time of his application certified in any other state and that certificate is not then in good standing, or if such person has ever been certified in any state but is not certified at the time of his application.

SECTION 4. AMENDMENT. Subsection 1 of section 43-02.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Within one year of July 1, 1975, a license to practice public accountancy in the state of North Dakota shall be granted to any natural person submitting a written application on forms provided by the board together with an application fee in an amount to be fixed by regulation of the board and not to exceed one hundred dollars and meeting all of the following qualifications without having to take an examination therefor:
  - a. ~~Applicant--must--be--a--citizen--of--the--United--States--or--have--duily--declared--his--intention--of--becoming---a--citizen-~~
  - b- Applicant must be a resident of North Dakota or have a place of business in North Dakota or be regularly employed herein.
  - e- b. Applicant must be of good moral character.
  - d- c. Applicant must have attained the age of eighteen years.
  - e- d. Applicant must meet one of the following additional qualifications on or before July 1, 1976:
    - (1) Applicant must be one who holds himself out to the public as a public accountant and who has been engaged in the practice of public accountancy as his principal occupation for at least the two-year period immediately preceding his application.
    - (2) Applicant must be one who for at least the two-year period immediately preceding his application has been an employee whose principal duty has been the practice of accounting for a certified public accountant or a public accountant engaged in the practice of public accountancy as his principal occupation.

- (3) Applicant must be one serving in the armed forces of the United States who immediately prior to entering such service held himself out to the public as a public accountant and who was engaged in the practice of public accounting as his principal occupation for at least the two-year period immediately preceding his entrance into the armed forces. An applicant who was serving in the armed forces on July 1, 1975, shall have one year from the date of his discharge to apply for his license.
- (4) Applicant must be one engaged for at least the two-year period immediately preceding his application in an accounting or auditing position with the government of the United States or a state for which an examination in accountancy or qualifying experience or education in accountancy is required.

SECTION 5. AMENDMENT. Subsection 1 of section 43-02.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The board may suspend for a period not to exceed five years or may revoke a certificate or a license to practice, or both, under this chapter for any of the following reasons:
  - a. If the holder thereof has been convicted of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as a certified or licensed public accountant, or the board finds, following conviction of an offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
  - b. If the holder thereof has been convicted of an offense involving moral turpitude.
  - c. For fraud or misrepresentation in the application for the certificate or license or in the examination for the certificate.
  - d. For failing to adhere to the code of professional ethics as prescribed by the board.
  - e. ~~For the failure of the holder of a certificate or license, if at the time the certificate or license was issued he was not a citizen of the United States, to qualify as a citizen within the time allowed by law.~~
  - f. If the out-of-state certificate or license of a nonresident who has been certified or licensed in

North Dakota under the provisions of subsection 4 of section 43-02.1-03 or subsection 3 of section 43-02.1-04 is suspended, revoked, or canceled in the state where it originally was issued.

- g- f. For failure to register as provided by section 43-02.1-06.
- h- g. For violation of any of the provisions of this chapter, or of any of the officially promulgated rules and regulations of the board.

SECTION 6. AMENDMENT. Section 43-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-09-02. STATE ELECTRICAL BOARD - MEMBERS - TERMS OF OFFICE - VACANCIES. The state electrical board shall consist of five members appointed by the governor for a term of five years with their terms of office so arranged that one term and only one term shall expire on June thirtieth of each year. One member of the board shall represent the public and shall not be directly associated with the electrical industry. ~~One member of the board shall be selected from three names submitted by each of the following groups: consumer members of rural electric cooperatives, master licensed electricians, licensed journeyman electricians, and investor owned electric utilities.~~ The board shall include a master electrician who is a contractor, a journeyman electrician, a consumer member of a rural electric cooperative, and a person associated with an investor owned utility. A member of the board shall qualify by taking the oath of office required of civil officers and shall hold his office until his successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term of office.

SECTION 7. AMENDMENT. Subsection 8 of section 43-11-16 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Agrees not to:

- a. Conduct a clinical department for fees after registration by the board, until such school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter;
- b. Permit any student to practice on any person not an instructor or registered student of such school until such student has completed at least twenty percent of the total hours of instruction required by this chapter;
- c. Compensate any of its basic students in any way; and

~~d. Repealed by S.L. 1975, ch. 402, § 3.~~

~~e. Advertise the fees charged for clinical service, and~~

SECTION 8. AMENDMENT. Section 43-12.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-05. BOARD OF NURSING - COMPOSITION - TERM OF OFFICE. There shall be a state board of nursing whose members shall be appointed by the governor which shall consist of five registered nurses, three licensed practical nurses, and one public member. ~~Sixty days prior to the expiration of the term of any registered nurse member, the North Dakota state nurses association and any other duly organized professional nursing organization recognized by the state board of nursing shall submit to the governor a list of registered nurses qualified to serve, such list to contain in number at least three names for each vacancy to be filled. Sixty days prior to the expiration of the term of any licensed practical nurse member, the North Dakota licensed practical nurses association shall submit to the governor a list of licensed practical nurses qualified to serve, the list shall contain in number at least three names for each vacancy to be filled. The governor shall appoint to the board a public member.~~ Each board member shall be appointed for a term of three years. No appointee shall be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. ~~The members of the North Dakota board of nursing holding office on July 1, 1977, shall serve as members of the board until the expiration of their respective terms or until their successors have been appointed.~~

SECTION 9. AMENDMENT. Subsection 11 of section 43-17-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. The advertising for the practice of medicine in any ~~unethical or unprofessional~~ an untrue or deceptive manner.

\* SECTION 10. AMENDMENT. Subsection 2 of section 43-23-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In addition to the requirements established by subsection 1, an applicant for a broker's or salesman's license must be at least eighteen years of age ~~and shall be a citizen of the United States and a North Dakota resident.~~

SECTION 11. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-07. REQUISITES FOR EXAMINATION - SUBJECTS - MINIMUM PASSING GRADE - FEES. Any person who shall furnish to the North Dakota board of massage satisfactory proof that he or she is eighteen years of age or more, a high school graduate, ~~a bona fide citizen of the United States~~ and a bona fide resident of the state

\* NOTE: Subsection 2 of section 43-23-08 was also amended by section 2 of House Bill No. 1162, chapter 447.

of North Dakota for at least ~~six--months~~ one month immediately preceding his or her application to take the examination, and of good moral character and temperate habits, and shall present a diploma or credentials issued by a recognized, approved school of massage or like institution of not less than one thousand hours of study and who passes a reasonable demonstrative, oral, and written examination, conducted by and under the supervision and direction of said board in the art of body massage by hand, or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths, and shall pay the fees hereinafter specified, which fees shall accompany the application to the secretary-treasurer of the board, shall be entitled to be registered and to be issued a certificate of registration as masseur or masseuse. Minimum requirements for certificate of registration shall be a general average in said examination of seventy-five percent in all subjects involved and not less than fifty percent in any one subject.

Any applicant failing to pass said requirements shall be entitled within six months to a reexamination upon payment of an additional fee of ten dollars, but two such reexaminations shall exhaust the privilege under the original application.

Conviction of an offense shall not disqualify a person from registration under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a masseur or masseuse, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 12. AMENDMENT. Section 43-26-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-26-04. STATE EXAMINING COMMITTEE - MEMBERS - TERMS - APPOINTMENTS - VACANCIES. The state examining committee for physical therapists, hereinafter the "committee," shall administer this chapter. The committee shall consist of three registered physical therapists, two licensed physicians, and a citizen who is not a health care professional. The governor shall appoint the committee members for a term of five years, staggered so the terms of no more than two members shall expire each year. No person shall serve more than two full consecutive terms. Terms shall begin on July first. ~~The health care appointments will be made from a list of three qualified physical therapists submitted by the North Dakota physical therapy association if a physical therapist is to be appointed, or from a list of three qualified physicians submitted by the state board of medical examiners if a physician is to be appointed. The governor shall appoint the citizen member at large.~~ Appointments to the committee to fill a vacancy occurring for other than the expiration of a term shall only be made for the remainder of the unexpired term. Each physical therapist appointed must have had at least three years of physical therapy experience in North

Dakota immediately prior to appointment, and must practice in North Dakota during the term. Each physician appointed must have practiced medicine at least three years in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each member of the state examining committee, before entering upon the discharge of his or her duties, shall take and file with the secretary of state the oath of office prescribed for state officials.

\* SECTION 13. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-04. QUALIFICATIONS AND APPOINTMENT OF MEMBERS OF THE BOARD - LIMITED VOTE.

1. No person shall be appointed as a dentist member of the board unless that person:
  - 1- a. Is a duly licensed and registered dentist.
  - 2- b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding his appointment.
  - 3- ~~Is recommended for such appointment by the North Dakota dental association.~~
  - 4- c. Never has served as a member of the board for an entire five-year term.

~~At least ninety days before the expiration of a term of any member of the board, the North Dakota dental association shall make its recommendation to the governor. Not less than three candidates shall be recommended for each appointment. If the recommendations are not made in the required time, the governor shall make the appointment from the last recommendations of the association.~~

2. No person shall be appointed as the dental hygienist member of the board unless that person:
  - a. Is a duly licensed and registered dental hygienist in accordance with the provisions of chapter 43-20.
  - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
  - c. Never has served as a member of the board for an entire five-year term.

\* NOTE: Section 43-28-04 was also amended by section 3 of House Bill No. 1226, chapter 450.

3. The dental hygienist member of the board shall exercise full voting privileges in all areas with the following exceptions:

- a. The issuance, suspension, and revocation of dental licenses.
- b. Any disciplinary action taken against dentists.
- c. The examination of dentists for licensure.

\* SECTION 14. AMENDMENT. Section 43-28-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-11. EXAMINATION REQUIRED - APPLICATION - QUALIFICATIONS - FEES. Any person who desires to obtain a license to practice dentistry in this state shall make application to the secretary-treasurer of the board on such forms as it may provide and shall submit to an examination by the board. The application shall be verified under oath to the effect that all of the statements contained therein are true of applicant's own knowledge. Applicant shall enclose with his application a recent autographed picture of himself and the sum of seventy-five dollars. Additional costs of simultaneous examination 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 must show proof that he has the following qualifications:

- 1. Is a graduate of a dental college recognized by the board.
- 2. ~~Is--a--citizen--of--the--United--States--or--has--filed--a--declaration--of--his--intention--to--become--a--citizen--of--the--United--States--and--that--his--application--for--naturalization--has--been--approved--by--the--proper--authorities.~~
- 3- Is a person of good moral character.

\*\* SECTION 15. AMENDMENT. Section 43-28-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-18. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE AND CERTIFICATE. The board may revoke or suspend the license and the certificate of registration of any dentist who has:

- 1. Been guilty of dishonorable, unprofessional or immoral conduct;
- 2. ~~Been denied admission to citizenship in the United States,~~
- 3- 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 dentist, or the board determines, following conviction for any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1;

\* NOTE: Section 43-28-11 was also amended by section 5 of House Bill No. 1580, chapter 445.

\*\* NOTE: Section 43-28-18 was also amended by section 11 of House Bill No. 1580, chapter 445.

- 4- 3. Has been adjudged mentally ill and not judicially restored by the regularly constituted authorities;
- 5- 4. Been guilty of habitual intemperance or addicted to the use of drugs;
- 6- 5. Employed or permitted unlicensed persons to practice dentistry in the office under his control;
- 7- 6. Become grossly negligent in the practice of his profession;
- 8- 7. Practiced fraud and deceit in obtaining his license or in the practice of dentistry;
- 9- 8. Employed a solicitor or agent to obtain business;
- 10- 9. Willfully betrayed confidential relations;
- 11- 10. Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners; provided, however, that a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of such association;
- 12- 11. Shared any professional fee with anyone or paid anyone for sending or referring patients to him, provided, however, that this shall 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;
- 13- ~~Given a public demonstration of any dental operation under any circumstances, except such as may be approved by the board;~~
- 14- 12. Used any advertising of any character tending to mislead and deceive the public;
- 15- ~~Used any advertising in which reference is made to the character or quality of the services performed or to be performed, to the materials or medicines used by him or to any price, cost, charge, fee or terms of credit for services performed or for materials used;~~
- 16- ~~Used a display sign in a larger area than six hundred square inches {3070.96 square centimeters} or containing letters more than six inches {15.24 centimeters} in height;~~

- ~~17. Used artificial lighting or illumination of any kind as a part of a sign or which has the effect of making any sign more prominent or conspicuous;~~
- ~~18. Advertised any free dental work, free examination, free consultation, a guarantee of any dental services, or the painless performance of any dental operation;~~
- ~~19. Used in connection with any advertising any artificial teeth, dentures or any representation of a tooth, teeth, bridgework or any portion of the human head;~~
- ~~20. Used any newspaper advertising except a professional card in the local press, or in programs, year books and other similar publications, which do not occupy more space than four column inches [10.16 centimeters] and which do not include more than the dentist's name, title, address, telephone number and office hours, provided that a dentist who has a specialty may announce that fact if he has been authorized to do so by the board;~~
21. 13. Controls or owns a dental laboratory or X-ray laboratory or operates the same in connection with his office, and has advertised such dental or X-ray laboratory in a manner prohibited herein;
22. 14. Made any false or untrue statements in his application for an examination to obtain a license to practice dentistry;
23. 15. Made any false representations that he is the holder of a license or certificate of registration to practice dentistry;
24. 16. Made any false claims that he is a graduate of a dental college or the holder of any diploma or degree from such college; and
25. 17. Violated any of the provisions of this chapter.

SECTION 16. AMENDMENT. Section 43-29-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-29-02. STATE BOARD OF VETERINARY MEDICAL EXAMINERS - APPOINTMENTS - QUALIFICATIONS - TERMS - VACANCIES. The state board of veterinary medical examiners shall consist of three members appointed by the governor for terms of three years each, with their terms of office so arranged that one term and only one shall expire each year. Members of the board shall hold their respective offices until their successors are appointed and qualified. Each member shall be a reputable, practicing and licensed veterinarian in North Dakota for five years immediately prior to the appointment, and shall be the holder of a diploma or degree granted by a veterinary school, or by a college or university recognized by the board.

~~The North Dakota veterinary medical association shall, at each annual meeting, nominate three veterinarians qualified to serve on the state board of veterinary examiners. Such names shall be certified to the governor by the secretary of such association and the appointment by the governor shall be made from the nominees so submitted.~~

If any vacancy occurs on the board due to resignation, death, removal from the state, or suspension as herein provided, or for any other reason, the governor shall fill such vacancy ~~from the roster of qualified licensed veterinarians within the state until the next succeeding first day of July.~~

The governor may, after due notice and hearing, remove any member of the board of veterinary examiners for misconduct, incapacity, or neglect of duty.

SECTION 17. AMENDMENT. Section 43-30-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-05. QUALIFICATIONS OF APPLICANT. A person is qualified to receive a license as a private detective:

1. Who is at least eighteen years of age.
2. ~~Who is a citizen of the United States.~~
3. Who establishes, to the satisfaction of the attorney general, that he is a person of honesty, truthfulness and integrity.
4. 3. Who has not been convicted of an offense determined by the attorney general to have a direct bearing upon the person's ability to serve the public as a private detective, or who, following conviction of any offense, is determined, pursuant to section 12.1-33-02.1, not to be sufficiently rehabilitated.
5. 4. Who has filed with the attorney general a bond executed by the applicant and by a reputable surety company to be approved by the attorney general in the penal sum of five thousand dollars conditioned for the faithful and honest conduct of the business of such applicant, which bond shall be in the form prescribed by the attorney general and shall be taken in the name of the people of the state of North Dakota and shall provide that any person injured by the breach of the conditions of such bond may bring an action on said bond in the name of the people of the state of North Dakota for the use of such person so injured to recover legal damages suffered by reason of such breach; provided, however, that the aggregate liability of the surety for all such damages shall, in no event, exceed the sum of said bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days' notice

in writing to the attorney general and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

- 6- 5. Who has passed a satisfactory examination conducted by the attorney general to determine his competency to receive a license as a private detective.

SECTION 18. AMENDMENT. Section 43-31-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-31-07. QUALIFICATIONS OF APPLICANT. A person is qualified to receive a license as an examiner:

1. Who is at least eighteen years of age.
2. ~~Who is a citizen of the United States.~~
- 3- Who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness.
- 4- 3. Who has not been convicted of an offense determined by the attorney general to have a direct bearing upon a person's ability to serve the public as an examiner, or who, following conviction of any offense, is not determined, pursuant to section 12.1-33-02.1, to be rehabilitated, or who has not been released or discharged under other than honorable conditions from any of the armed services of the United States.
- 5- 4. Who has passed an examination conducted by the attorney general, or under his supervision, to determine his competency to obtain a license to practice as an examiner except that an examiner who was continually engaged in the administration of examinations for the two-year period immediately prior to July 1, 1975, or who had successfully completed a training course prior to July 1, 1975, from a school deemed acceptable by the attorney general, and who was previously exempt from the provisions of this chapter as an examiner in the exclusive employ of the state of North Dakota, a county, municipality, or political subdivision thereof as then provided by section 43-31-15 shall be exempt from the requirement of an examination.
- 6- 5. Who has satisfactorily completed a polygraph examiners course approved by the attorney general and has satisfactorily completed not less than six months of internship training.

SECTION 19. AMENDMENT. Section 43-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-32-02. STATE BOARD OF PSYCHOLOGIST EXAMINERS - HOW APPOINTED - QUALIFICATIONS. The governor shall appoint a state board of psychologist examiners consisting of five members, each of whom shall have the following qualifications:

1. ~~Be a citizen of the United States.~~
2. Be a resident of this state.
3. 2. After the first five appointments, shall be a licensed psychologist under this chapter.
4. 3. Has, at least five years prior to appointment, received a doctorate degree in psychology from a school or college as defined in this chapter.
5. 4. Has been actively engaged in the practice of teaching or research of psychology for a period of at least five years.
6. 5. As to at least one member, is currently engaged primarily in rendering service in psychology and as to at least one member, is engaged primarily in teaching, training or research in psychology.

~~At least thirty days before any appointment is to be made, the North Dakota Psychological Association shall recommend five persons to the governor for such appointment.~~

SECTION 20. AMENDMENT. Section 43-32-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-32-18. LICENSING OF PSYCHOLOGISTS WITHOUT EXAMINATION - QUALIFICATIONS OF APPLICANTS.

1. For a period of one year from July 1, 1967, the board shall waive examination of a candidate for licensing if it appears that such action is in the public interest, and it shall issue a license upon payment of the required fee, to any applicant who makes application and furnishes evidence satisfactory to the board that he:
  - a. Is of good moral character.
  - b. Is not found by the board to be engaged in unethical practices.
  - c. Has received a doctorate in psychology from an accredited school or college or has training deemed equivalent by the board in both subject matter and extent of training.

~~d.---Is-a-citizen-of-the-United-States-or-intends-to-become  
a-citizen-and-files-an-affidavit-as-to-such--with--the  
board.~~

2. At its discretion, the board may at any time issue a license without examination, upon payment of the required fee, to any diplomate of the American board of examiners in professional psychology.

SECTION 21. AMENDMENT. Section 43-32-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-32-20. LICENSING - WRITTEN AND ORAL EXAMINATION - QUALIFICATIONS OF APPLICANTS. The board shall issue a license as a psychologist to each applicant who shall file an application upon a form and in such a manner as the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that he:

1. Is of good moral character.
2. Is not found by the board to be engaged in unethical practices.
3. Has received from an accredited school or college as defined by this chapter a doctorate, with a program of studies substantially psychological in nature.
4. ~~Is--a--citizen-of-the-United-States-or-intends-to-become-a  
citizen-and-files-an-affidavit-as-to-such-with-the--board.~~
5. Demonstrates professional competence as shown by passing such examinations, written or oral, or both, as the board deems necessary.
- 6- 5. Has not, within the preceding six months, failed an examination given.

SECTION 22. AMENDMENT. Section 43-34-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-34-02. COMPOSITION OF THE BOARD. There is hereby created the state board of examiners for nursing home administrators which shall consist of nine members.

1. Two members of the board shall be the state health officer and the executive director of the social service board of North Dakota.
2. One member of the board shall be a physician appointed to the board for a three-year term by the governor ~~from--a  
list--of--three--names--submitted--by--the--state--medical  
association.~~

3. One member of the board shall be a hospital administrator appointed to the board for a three-year term by the governor ~~from a list of three names submitted by the North Dakota hospital association.~~
4. Three members of the board shall be licensed nursing home administrators appointed to the board for three-year terms by the governor ~~from a list of names submitted by the North Dakota hospital association. The association shall submit three names for each appointive position.~~
5. One member of the board shall be a licensed nursing home administrator appointed to the board for a three-year term by the governor ~~from a list of three names submitted by the North Dakota health care association.~~
6. One member of the board shall be a nurse appointed to the board for a three-year term by the governor ~~from a list of three names submitted by the North Dakota state nurses' association.~~
7. Any vacancies occurring in the appointments made by the governor shall be filled ~~in the same manner as was used in naming the prior appointee~~ by the governor.
8. Appointive members may be removed by the governor for cause after due notice and hearing.

SECTION 23. AMENDMENT. Section 43-35-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-03. STATE BOARD OF WATER WELL CONTRACTORS - MEMBERS' APPOINTMENT - QUALIFICATION. The state board of water well contractors shall consist of the state engineer and the state health officer, or their duly authorized designees, and two water well contractors appointed by the governor ~~from a list of five names submitted by the North Dakota well drillers' association,~~ and one member appointed at large by the governor.

SECTION 24. AMENDMENT. Section 43-36-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-36-02. BOARD - APPOINTMENTS - TERMS. A state board of registration for professional soil classifiers is hereby created whose duty it shall be to administer the provisions of this chapter. The board shall consist of three professional soil classifiers appointed by the governor ~~from among a list of nominees submitted to him by the Professional Soil Classifiers Association of North Dakota~~ and two members at large appointed by the governor. The members of the board shall be appointed for five years, staggered so the term of one member shall expire June thirtieth of each year and so that the terms of the members at large do not expire in consecutive years. Each member of the board shall receive a certificate of his appointment from the governor and shall file with the secretary of

state his written oath and affirmation of the faithful discharge of his official duties. On the expiration of the term of any member, the governor shall in the manner hereinbefore provided appoint for a term of five years a registered professional soil classifier or a member at large to take the place of the member whose term on said board is about to expire. A member may be reappointed to succeed himself. Each member shall hold office until a successor has been duly appointed and has qualified.

SECTION 25. AMENDMENT. Subsection 2 of section 43-37-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The board shall be comprised of seven members who shall be appointed by the governor ~~from names submitted to the governor by the state association~~. Appointees shall be residents of this state for at least one year immediately preceding their appointment, and shall be engaged in rendering services to the public, in teaching, or in research in audiology or speech pathology for at least three years preceding their appointment. Two board members shall be audiologists, two shall be speech pathologists, one shall be an otolaryngologist, one shall be a hearing aid specialist, and one member who shall be a consumer.

SECTION 26. REPEAL. Sections 43-11-36 and 43-13-29 of the North Dakota Century Code are hereby repealed.

Approved March 19, 1981

## CHAPTER 436

HOUSE BILL NO. 1352  
(Unhjem)

## ABSTRACTERS' BOARD OF EXAMINERS

AN ACT to amend and reenact sections 43-01-04, 43-01-10, 43-01-11, and 43-01-14 of the North Dakota Century Code, relating to compensation payable to the abstracters' board of examiners, examination fees payable to the board, amount of abstracters' surety, and registration fees payable to the board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-04. COMPENSATION. A member of the board shall receive ~~five~~ thirty dollars for each day he actually is engaged in the performance of the duties of his office and such mileage as is provided for in section 54-06-09. In addition thereto, he shall receive for expenses ~~five-dollars-a-day-while-absent-from-home~~ the amounts provided by law for state officers in section 44-08-04. All funds collected or received by the board shall be deposited and disbursed in accordance with section 54-44-12.

SECTION 2. AMENDMENT. Section 43-01-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-10. CERTIFICATE OF REGISTRATION - APPLICATION - EXAMINATION - FEE. Any person, firm, or corporation desiring to obtain a certificate of authority under the provisions of section 43-01-09, subsection 2, shall make application therefor to the board and shall pay to the secretary-treasurer thereof an examination fee of ~~twenty-five~~ two hundred fifty dollars. The application shall be upon a form prepared by the board and shall contain such information as may be desired by it. The board shall fix the date and place for the examination of the applicant and shall give him notice thereof by mail. The applicant shall present himself at the time and place specified in the notice, and the board shall examine him under such rules and regulations as it may prescribe. If the application is made by a firm or corporation, one of the members or officers thereof shall take the examination.

1. Registered abstracters, within the meaning of the chapter, shall comprise all persons who shall, upon the passage of this chapter, be in charge, either individually or jointly with other persons, of the abstract office which is the holder of a valid and subsisting certificate of authority as provided by this chapter and who shall obtain a certificate of registration as hereinafter provided, or persons who shall be granted certificates of registration by the ~~said-abstracters'~~ board of-examiners after passage of this chapter.
2. Any person desiring to obtain a certificate of registration under this chapter shall make application to ~~said--abstracters'~~ the board of--examiners--therefor and shall pay to the secretary-treasurer of ~~said the~~ board an examination fee of ~~twenty-five~~ forty dollars except as hereinafter provided. Such application shall be upon a form to be prepared by ~~said the~~ board and to contain such information as may be desired by it. Thereupon ~~said the~~ board shall fix a date and place for the examination of such applicant, of which notice shall be given to applicant by mail, who shall present himself at such meeting. Whereupon ~~said the~~ board shall proceed to examine such applicant or applicants under such rules and regulations as may be ~~by-said-board-prescribed~~ adopted by the board.
3. Any person, who, upon the effective date of this chapter, is in charge, either individually or jointly with other persons, of an abstract office which is the holder of a valid and subsisting certificate of authority provided by, section 43-01-09, subsection 2, and who shall make application to the ~~abstracters'~~ board of--examiners prior to the expiration of said certificate of authority shall upon the payment of a fee of five dollars be issued a certificate of registration, without examination, under such rules as may be provided by said board.
4. The certificate of registration issued by said board under the provisions hereof shall recite, among other things, that the holder thereof has complied with the provisions of this chapter relating to examination or otherwise, and shall entitle the holder of such certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority, under the provisions of this chapter. Certificates of registration shall be issued upon the payment of a five dollar fee and shall be valid for one year from the date thereof but shall be renewed annually by said board upon application within thirty days prior to the expiration thereof upon a payment of ~~two~~ five dollars and-fifty-cents to the secretary-treasurer of ~~said the~~ board. ~~Said The~~ board may issue temporary certificates of registration in ~~their~~ its discretion ~~between-meetings-of-said-board.~~

5. Said board shall keep a register, wherein it shall enter the names of all applications for registration, and for certificates of authority, with their place of business and such other information as may be deemed appropriate, including the action taken by said board thereon, and the dates upon which certificates of registration and certificates of authority are issued.

SECTION 3. AMENDMENT. Section 43-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-11. BONDS OR LIABILITY POLICY - DEDUCTIBLE POLICY PERMITTED. Before a certificate of authority shall be issued, the applicant therefor shall file a surety bond ~~running to~~ in favor of the state ~~of North Dakota~~, or an abstracters' liability policy to be approved by the ~~abstracters'~~ board ~~of--examiners~~ as to form, sufficiency, and surety thereof and written by a company authorized to write such insurance in this state, in a penal sum or limit of liability equal to ten thousand dollars for each ten thousand inhabitants, or major fraction thereof, residing in the county in which the applicant's office is maintained, as shown by the last official federal or state census preceding the filing of the bond or abstracter's liability policy. Such bond, or abstracter's liability policy, however, shall not be less than ~~ten~~ one hundred thousand dollars. The bond or liability policy shall be conditioned for the payment by the abstractor of any liability imposed upon him by law for damages arising from any claim against him that may be sustained by or that shall accrue to any person by reason or on account of any negligent act, error or omission in any abstract or certificate of title, or continuation thereof, made and issued by the abstractor. ~~Said~~ The board shall file all surety bonds in the office of the county auditor of the county in which the applicant has his place of business. All abstracters' liability policies shall be endorsed to provide that cancellation cannot be effected by either the abstractor or the insurance company without ten days' written notice to the abstracters' board of examiners, who shall file said endorsed policy or a certificate thereof in the office of the county auditor of the county in which the applicant has his place of business. It shall be permissible under this section to file an abstractor's liability policy in the deductible form, provided that the deductible provision shall not exceed ~~five--hundred~~ one thousand dollars.

SECTION 4. AMENDMENT. Section 43-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-14. CERTIFICATION OF AUTHORITY - FEE - RENEWAL. A certificate of authority shall be issued to an applicant who successfully passes the examination of the board and complies with the other provisions of this chapter, upon the payment of the registration fee of ~~twenty-five~~ forty dollars which shall be in addition to the examination fee. A certificate shall be valid for five years after the date thereof. A certificate shall be renewed by the board upon application, made within thirty days prior to the

expiration date, accompanied by the sum of twenty-five dollars and an affidavit that the applicant has for use in his business a complete set of abstract books or records of all instruments of record in the office of the register of deeds in and for the county in which the applicant has his place of business or has been engaged in good faith in the preparation of such books or records for not less than six months.

Approved March 5, 1981

## CHAPTER 437

HOUSE BILL NO. 1495  
(Gates, Koski)

## ABSTRACTER'S FEES

AN ACT to amend and reenact section 43-01-18 of the North Dakota Century Code, relating to the fees of abstracters; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-18. FEES CHARGEABLE BY ABSTRACTER. An abstracter may charge the following fees, and no more for making and certifying to an abstract:

1. For ~~the--first~~ each entry on an abstract or continuation thereof, three dollars.
2. ~~For--every--entry--other--than--the--first--entry--two--dollars--and--twenty--five--cents--~~
- 3- For a complete certification covering the records of the several county offices, ~~twenty~~ forty dollars.
- 4- 3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title an additional fee of seven dollars and fifty cents, for each quarter section [64.75 hectares] or portion thereof in excess of one, may be charged.
- 5- 4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, an additional fee of seven dollars and fifty cents, for such premises in each additional block in excess of one, may be charged.
- 6- 5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax

liens, mechanics' liens and mechanics' lien notices, one dollar and fifty cents.

7- 6. For all miscellaneous instruments, one dollar and fifty cents for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.

8- 7. Such fees as may be fixed by special statute.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 5, 1981

## CHAPTER 438

SENATE BILL NO. 2121  
(Committee on Industry, Business, and Labor)  
(At the request of the Secretary of State)

## CONTRACTOR'S LICENSE REQUIREMENTS

AN ACT to amend and reenact sections 43-07-05, 43-07-07, 43-07-09, 43-07-10, and 43-07-19 of the North Dakota Century Code, relating to contractors' license fees, expiration and renewal of contractors' licenses, and nonresident contractors' appointment of agent for service of process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-05. CLASSES OF LICENSES. Four classes of licenses shall be issued under ~~the provisions of~~ this chapter, which shall be designated as class A, B, C, and D licenses. The holders of such licenses shall be entitled to engage in the contracting business within this state subject to the following limitations:

1. The holder of a class A license shall be subject to no limitation as to the value of any single contract project.
2. The holder of a class B license shall not be entitled to engage in the construction of any single contract project of a value in excess of ~~one~~ two hundred ~~twenty-five~~ fifty thousand dollars.
3. The holder of a class C license shall not be entitled to engage in the construction of any single contract project of a value in excess of ~~sixty~~ one hundred twenty thousand dollars.
4. The holder of a class D license shall not be entitled to engage in the construction of any single contract project of a value in excess of ~~twenty-five~~ fifty thousand dollars.

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

43-07-07. LICENSE FEES. At the time of making application for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

1. For a class A license, the sum of two hundred fifty dollars.
2. For a class B license, the sum of one hundred fifty dollars.
3. For a class C license, the sum of one hundred dollars.
4. For a class D license, the sum of ~~twenty-five~~ fifty dollars.

All moneys collected by the registrar under this chapter shall be deposited by him with the state treasurer, who shall credit them to the general fund of the state.

SECTION 3. AMENDMENT. Section 43-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-09. DUTY OF REGISTRAR - EXPIRATION OF LICENSE. The registrar shall investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license shall be issued to such applicant until the expiration of ten days from and after the filing of the application. The license issued on an original application shall entitle the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current ~~calendar~~ fiscal year ending February first.

SECTION 4. AMENDMENT. Section 43-07-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-10. RENEWAL OF LICENSE. Any license issued under the provisions of this chapter may be renewed for each successive ~~calendar~~ fiscal year by obtaining from the registrar a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal, the licensee shall file with the registrar an application therefor, which application shall be accompanied by a list in duplicate showing each contract or subcontract obtained by the licensee during the ~~calendar~~ preceding fiscal year in North Dakota for which a license was required under this chapter, the nature of the work contracted or subcontracted, and, if a performance bond was required by the contract, the name and address of the corporation or other person who issued the bond. The registrar shall within a reasonable time forward one copy of such list to the state tax commissioner and shall also indicate whether or not the license of the applicant was renewed by him. The application for such certificate of renewal must be made to the registrar on or before the first day of ~~January~~ February of each successive ~~calendar~~ fiscal year. At the time of filing the

application for a certificate of renewal, the applicant shall pay to the registrar a license fee equal to twenty percent of the license fee for the original license. If any applicant for a certificate of renewal shall apply for a renewal under a class different from the license theretofore issued to him, such new license shall be issued only upon the showing and under the terms and conditions and upon the payment of the same fee required for the issuance of an original license of the class applied for. All certificates of renewal wherein the applicant does not apply for a change in the class of license shall be issued by the registrar to the applicant when the application is properly filed and the license renewal fee is paid.

SECTION 5. AMENDMENT. Section 43-07-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-19. NONRESIDENT CONTRACTORS - AGENT FOR SERVICE OF PROCESS. Every applicant for a contractor's license who is not a resident of the state of North Dakota shall furnish to the secretary of state of the state of North Dakota a written appointment by which such applicant appoints the secretary of state of the state of North Dakota as his true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing shall be evidence of said contractor's consent that any such process against him which is so served upon the secretary of state shall be of the same legal force and effect as if served upon him personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-22 of the North Dakota Century Code and having a current registered agent and registered address on file in the corporate division of the secretary of state's office need not appoint the secretary of state as agent for service of process under the provisions of this section of law. Within ten days after service of the summons upon the secretary of state, notice of such service together with the summons and complaint in the action shall be sent to the defendant contractor at his last known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon him under the provisions of this section. Such record shall show the day and hour of service. Whenever service of process shall have been made as provided in this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against him.

Approved March 6, 1981

## CHAPTER 439

SENATE BILL NO. 2355  
(Grotberg)

## CONSTRUCTION CONTRACT RETAINAGE

AN ACT to create and enact a new section to chapter 43-07 of the North Dakota Century Code, relating to the limit on retention of payment under construction contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

\* SECTION 1. A new section to chapter 43-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

ALLOWABLE RETENTION OF ESTIMATES - INTEREST ON RETAINAGE. Contracts entered into between persons for the performance of work to be done by a contractor, except those contracts subject to section 40-22-37 or section 48-02-07, or contracts governed by federal statutes or regulations which require other provisions with respect to retention, are subject to a maximum retention on amounts due under the contract as follows: retention of ten percent of each estimate presented shall be allowable until such time as the project is fifty percent complete, with no further retainage on estimates during the continuance of the contract. If the owner, governing board, or authorized committee invests the retained estimate funds, the interest earned on those retained funds shall be payable at the time of final payment on the contract to the contractor on whose account the moneys were held.

Approved March 31, 1981

## CHAPTER 440

SENATE BILL NO. 2367  
(Tennefos)

**PRE-NEED FUNERAL SERVICE CONTRACT PAYMENTS**

AN ACT to create and enact subsection 6 of section 43-10.1-01 of the North Dakota Century Code, relating to definitions used in pre-need funeral service contracts; and to amend and reenact section 23-06-03.1, subsections 2 and 3 of section 43-10.1-01, and subsection 4 of section 43-10.1-03 of the North Dakota Century Code, relating to the deposit of funds collected from and the definitions used in pre-need funeral service contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03.1. PAYMENTS ON PRE-NEED FUNERAL CONTRACTS TO BE DEPOSITED IN A BANK OR TRUST COMPANY - BANK SHALL KEEP RECORD OF DEPOSIT. Whenever payments are made to any person upon pre-need funeral service contracts, all-payments-made-under-the-contract one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise shall be deposited within thirty days in a bank or trust company carrying federal deposit insurance and located within the state of North Dakota. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. Such funds may be released by the bank or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death shall be furnished to the bank or trust company as prima facie evidence of death. Such funds may be released by the bank or trust company to the person making such payment, prior to the death of the person for

whose benefit the funds are paid, upon a five day written notice by registered or certified mail made by the bank or trust company to the depositor at the request of the person making such payment.

Any bank or trust company receiving such a deposit shall keep a complete record thereof, showing the name of the depositor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 43-10.1-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Pre-need funeral service contract" means any contract, other than a contract of insurance, under which for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish professional service or personal property to be used in funeral services, or to furnish cemetery merchandise.
3. "Professional service or personal property to be used in funeral services" means all personal property, services, supplies, and equipment normally performed or furnished by a licensed embalmer, a licensed funeral establishment, or a cemetery association including any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques and all other articles of merchandise incident to a funeral service, but excluding any outside interment receptacles into which any inside receptacle or container will be placed, grave lots, grave spaces, grave markers, monuments, tombstones, crypts, niches and mausoleums unless these items are sold by a companion agreement or in contemplation of a trade or barter which includes the sale or rental of any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques or other articles of merchandise incident to a funeral service.

SECTION 3. Subsection 6 of section 43-10.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

6. "Cemetery merchandise" means all service or property to be used in funeral services or burials other than "professional service or personal property to be used in funeral services" as defined in subsection 3 above.

SECTION 4. AMENDMENT. Subsection 4 of section 43-10.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The name and address of the bank or trust company in which such consideration was deposited in accordance with section 23-06-03.1. ~~Except--that-a-cemetery-association shall-deposit-not-less-than--fifty--percent--of--the--sale price--of--vaults--and-markers-in-a-trust-fund-as-provided for-in-23-06-03-1-~~

Approved March 18, 1981

## CHAPTER 441

HOUSE BILL NO. 1462  
(Moore, Kloubec)

## BOARD OF OPTOMETRY

AN ACT to amend and reenact sections 43-13-03, 43-13-07, 43-13-08, 43-13-10, and 43-13-16 of the North Dakota Century Code, relating to the state board of optometry, compensation and expenses of board members, compensation for the secretary of the board, meetings of the board, and administration of professional examinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-03. NORTH DAKOTA STATE BOARD OF OPTOMETRY - MEMBERS - APPOINTMENT - QUALIFICATIONS - TERMS OF OFFICE - OATH - VACANCIES. The North Dakota state board of optometry shall consist of five ~~seven~~ members appointed by the governor for a term of five years each, with their terms of office so arranged that at least one term ~~only~~ shall expire on June thirtieth of each year. The Five of the members of the board shall be resident registered optometrists who have an established optometric practice in this state and who are members in good standing of the North Dakota optometric association engaged in the actual practice of optometry in this state. Each member of the board shall qualify by taking the oath required of civil officers and filing the same with the secretary of the board. A member of the board shall hold his office until his successor is appointed and qualified. A vacancy on the board shall be filled by appointment by the governor for the remainder of the unexpired term.

SECTION 2. AMENDMENT. Section 43-13-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-07. COMPENSATION AND EXPENSES OF BOARD MEMBERS. Each A member of the board shall receive ~~twenty-five---dollars~~ as compensation for each day he actually is engaged in performing the duties of his office a per diem as established by the board, and ~~such~~ mileage and travel expenses as are provided for in section 54-06-09, and additional allowance for other necessary expenses

incurred in attending said meeting not to exceed five dollars per day. All funds collected or received by the board shall be deposited and disbursed in accordance with section 54-44-12.

SECTION 3. AMENDMENT. Section 43-13-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-08. SECRETARY OF BOARD - COMPENSATION. The secretary of the board shall receive for clerical expenses and ~~services--such compensation--and other expenses of the board an allowance as the board may deem just and proper, not to exceed five dollars for each certificate--or--license--issued--or--renewed,~~ and a salary or other compensation, as the board shall determine.

SECTION 4. AMENDMENT. Section 43-13-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-10. MEETINGS OF BOARD - QUORUM - WHAT CONSTITUTES. The board shall meet at least once in each year at a place it designates, and in addition thereto whenever and wherever the president and the secretary, for proper cause, call a meeting. ~~Three~~ Four members of the board in actual attendance at any meeting shall constitute a quorum for the transaction of business.

SECTION 5. AMENDMENT. Section 43-13-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-16. EXAMINATION REQUIRED - WHEN GIVEN. Before any person is granted a certificate of registration to practice optometry in this state, he shall pass an examination given by the board. The examination may be conducted by two or more of the professional members of the board at such times and places as are prescribed by it.

Approved March 3, 1981

## CHAPTER 442

SENATE BILL NO. 2222  
(Senator Peterson)  
(Representative A. Olson)

## OPTOMETRIST'S PHARMACEUTICAL AGENTS USE

AN ACT to create and enact a new section to chapter 43-13 of the North Dakota Century Code, relating to the state board of optometry's certification of optometrists to use ocular diagnostic pharmaceutical agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

BOARD MAY AUTHORIZE USE OF OCULAR DIAGNOSTIC PHARMACEUTICAL AGENTS - TRAINING REQUIRED FOR CERTIFICATION - BOARD MAY ADOPT RULES.

1. The board may authorize persons engaging in the practice of optometry under the provisions of this chapter to administer ocular diagnostic pharmaceutical agents. This authorization shall only include the ordering and utilization of such ocular diagnostic pharmaceutical agents. In issuing an original or renewal certificate of registration pursuant to this chapter, the board shall expressly state in a prominent place on the certificate whether the registered person has been certified to prescribe and use ocular diagnostic pharmaceutical agents.
2. Only those optometrists who have duly applied to the board and satisfactorily passed an examination and completed courses prescribed by the board, including courses in general and ocular pharmacology, cardiopulmonary resuscitation, and first aid for adverse reactions, shall be permitted the use of ocular diagnostic pharmaceutical agents. No course or courses in pharmacology shall be approved by the board unless taught by an institution having the capability for both the didactic and clinical instruction in pharmacology, the institution is accredited by a regional or professional accrediting organization recognized and approved by the council on postsecondary

- accreditation or the United States office of education, and unless transcript credit for the course or courses is certified to the board by the institution as being equivalent in both hours and content to those courses in pharmacology required of health professional students graduating after June 1972.
3. The board shall adopt rules, including rules setting out requirements for additional educational qualifications necessary to ensure the required professional competency by those practitioners who apply to the board to be certified in the use of ocular diagnostic pharmaceutical agents. In addition to the registration fees charged by the board, an additional reasonable fee may be set for the examination, reexamination, and certification of applicants for use of ocular diagnostic pharmaceutical agents pursuant to this section.

Approved March 9, 1981

## CHAPTER 443

SENATE BILL NO. 2189  
 (Committee on Industry, Business, and Labor)  
 (At the request of the State Board of Pharmacy)

## BOARD OF PHARMACY DEFINITIONS

AN ACT to amend and reenact section 43-15-01 of the North Dakota Century Code, relating to pharmacy definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-15-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. "Pharmacy" or "drug store" means every store or shop where drugs, medicines, or chemicals are dispensed, displayed for sale, or sold, at retail for medicinal purposes, or where prescriptions are compounded, and which is duly registered by the state board of pharmacy.
2. "Board" means the state board of pharmacy.
3. "Pharmacist" means a person to whom the board has issued a certificate of registration to practice the profession of pharmacy whose certificate has not expired, or been suspended.
4. "Prescription" means any order for drugs or medical supplies, where such order is written or signed or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed physician, optometrist, dentist, veterinarian or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded or dispensed by a pharmacist.
5. "Drugs" includes all substances and preparations recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States,

~~Official National Formulary and New and Nonofficial Drugs,  
or any official supplement to any of them.~~

~~6. "Medicine" means a drug or combination of drugs, used in  
treating disease in man or other animals.~~

~~7. "Dispense" includes sell, distribute, leave with, give  
away, dispose of, deliver or supply.~~

~~8. "Original package" means the original carton, case, can,  
box, vial, bottle or other receptacle, put up by the  
manufacturer or wholesaler or distributor, with label  
attached, making one complete package of the drug article.~~

1. "Board" means the state board of pharmacy.

2. "Deliver" or "delivery" means the actual, constructive or  
attempted transfer of a drug or device from one person to  
another, whether or not for a consideration.

3. "Device" means an instrument, apparatus, implement,  
machine, contrivance, implant, in vitro reagent or other  
similar or related article, including any component part  
or accessory, which is required under federal or North  
Dakota law to be prescribed by a petitioner and dispensed  
by a pharmacist.

4. "Dispense" or "dispensing" means the preparation and  
delivery of a prescription drug pursuant to a lawful order  
of a practitioner in a suitable container appropriately  
labeled for subsequent administration to or use by a  
patient or other individual entitled to receive the  
prescription drug.

5. "Distribute" means the delivery of a drug other than by  
dispensing or administering.

6. "Drug" or "drugs" means:

a. Articles recognized as drugs in the official United  
States pharmacopeia, official national formulary,  
official homeopathic pharmacopeia, other drug  
compendium or any supplement to any of them;

b. Articles intended for use in the diagnosis, cure,  
mitigation, treatment or prevention of disease in man  
or other animal;

c. Articles (other than food) intended to affect the  
structure or any function of the body of man or other  
animals; and

- d. Articles intended for use as a component of any articles specified in subdivisions a, b, or c of this subsection.
7. "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal and North Dakota law or regulation.
8. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug:
- a. By a pharmacist or practitioner as an incident to his dispensing or administering of a drug in the course of his professional practice; or
- b. By a practitioner or by his authorization under supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.
9. "Manufacturer" means a person engaged in the manufacture of drugs in facilities located within North Dakota.
10. "Medicine" means a drug or combination of drugs, used in treating disease in man or other animals.
11. "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.
12. "Original package" means the original carton, case, can, box, vial, bottle or other receptacle, put up by the manufacturer or wholesaler or distributor, with label attached, making one complete package of the drug article.
13. "Person" means an individual, corporation, partnership, association or any other legal entity.
14. "Pharmacist" means a person to whom the board has issued a certificate of registration to practice the profession of

- pharmacy whose certificate has not expired, or been suspended.
15. "Pharmacy" or "drug store" means every store or shop where drugs, medicines, or chemicals are dispensed, displayed for sale, or sold, at retail for medicinal purposes, or where prescriptions are compounded, and which is duly registered by the state board of pharmacy.
16. "Practice of pharmacy" means the interpretation and evaluation of prescription orders; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising, where necessary or where regulated, therapeutic values, content, hazards and use of drugs and devices; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management, and control of pharmacy.
17. "Practitioner" means a physician, dentist, veterinarian, scientific investigator or other person (other than pharmacists) licensed by North Dakota and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in North Dakota.
18. "Prescription" means any order for drugs or medical supplies, where such order is written or signed or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed physician, optometrist, dentist, veterinarian or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded or dispensed by a pharmacist.
19. "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following:
- a. "Caution: Federal law prohibits dispensing without prescription";
  - b. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";
- or a drug which is required by any applicable federal or North Dakota law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

20. "Radiopharmaceutical service" means, but is not limited to, the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards, and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management, and control of radiopharmaceuticals.
21. "Wholesaler" means a person with facilities located in this state who buys for resale and distribution to persons other than consumers.

Approved March 18, 1981

## CHAPTER 444

HOUSE BILL NO. 1189  
(Committee on Industry, Business, and Labor)  
(At the request of the State Board of Pharmacy)

## PHARMACY RULES AND OFFENSE PENALTIES

AN ACT to create and enact subsections 12, 13, and 14 to section 43-15-10 and a new section to chapter 43-15 of the North Dakota Century Code, relating to powers of the board of pharmacy and to disciplinary penalties for pharmacists; and to amend and reenact subsection 1 of section 43-15-10 of the North Dakota Century Code, relating to powers of the board of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. Subsections 12, 13, and 14 to section 43-15-10 of the 1979 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

12. To regulate and control the practice of pharmacy in North Dakota.
13. To adopt, amend, and repeal rules for the regulation of pharmacies and pharmacists providing radiopharmaceutical services, including special training, education, and experience for pharmacists and physical design of space, safeguards and equipment for pharmacies.
14. To make, adopt, amend, and repeal rules as may be deemed necessary by the board from time to time for the proper administration and enforcement of this chapter.

SECTION 2. AMENDMENT. Subsection 1 of section 43-15-10 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~To --- cancel, --- revoke, --- or --- suspend --- the --- certificate --- and registration of any registered pharmacist who~~ To refuse to issue or renew, or may suspend, revoke or restrict the certificate, registration or permit of any pharmacist or registered pharmacist, upon one or more of the following grounds:

- a. Is addicted to any drug habit.
- b. Uses any advertising statements of a character tending to deceive or mislead the public.
- c. Is a chronic or persistent inebriate.
- d. Permits or engages in the unauthorized sale of narcotic drugs or controlled substances.
- e. Permits or engages an unauthorized person to practice pharmacy.
- f. Is mentally or physically incompetent to handle his pharmaceutical duties.
- g. Is guilty of fraud, deception, or misrepresentation in passing his pharmacist examination.
- h. ~~Willfully--and--repeatedly--violates~~ Is found by the board in violation of any of the provisions of the laws regulating pharmacists or the rules and regulations established by the board.
- i. Unprofessional conduct as that term is defined by the rules and regulations of the board.
- j. Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public.
- k. Is found guilty by a court of competent jurisdiction of one or more of the following:
  - (1) A felony, as defined by the statutes of North Dakota.
  - (2) Any act involving moral turpitude or gross immorality.
  - (3) Violations of the pharmacy or the drug laws of North Dakota or rules and regulations pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government.
- l. Fraud or intentional misrepresentation by a pharmacist in securing the issuance or renewal of a certificate of registration or pharmacy permit.

SECTION 3. A new section to chapter 43-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

PENALTIES, REINSTATEMENT, CRIMINAL PROSECUTIONS, AND JUDICIAL REVIEW.

1. Upon the finding of the existence of grounds for discipline of any person holding, seeking, or renewing a certificate of registration, permit, or license under this chapter, the board may impose one or more of the following penalties:
  - a. Suspension of the offender's certificate of registration, permit, or license for a term to be determined by the board.
  - b. Revocation of the offender's certificate of registration, permit, or license.
  - c. Restriction of the offender's certificate of registration, permit, or license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board.
  - d. Refusal to renew offender's certificate of registration, permit, or license.
  - e. Placement of the offender on probation and supervision by the board for a period to be determined by the board.
2. Any person whose certificate of registration, permit, or license to practice pharmacy in North Dakota has been suspended, revoked, or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such certificate of registration, permit, or license. A petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.
3. Nothing herein shall be construed as barring criminal prosecutions for violations of this chapter where such violations are deemed as criminal offenses in other statutes of North Dakota or of the United States.
4. All final decisions by the board shall be subject to judicial review pursuant to chapter 28-32.

Approved April 1, 1981

## CHAPTER 445

HOUSE BILL NO. 1580  
(Martinson)

## DENTISTS AND DENTAL HYGIENISTS

AN ACT to amend and reenact sections 43-20-02, 43-20-06, 43-20-07, 43-28-05, 43-28-11, 43-28-12.1, 43-28-12.2, subsection 3 of section 43-28-15, sections 43-28-16, 43-28-17, 43-28-18, 43-28-22, and 43-28-24 of the North Dakota Century Code, relating to license requirements and fees of dentists and dental hygienists, grounds for suspension of dental license, compensation of members of the board of dental examiners, and providing that examinations may be conducted by a designee of the board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-02. DENTAL HYGIENISTS - QUALIFICATIONS - EXAMINATIONS - REGISTRATION AND LICENSE. Any person of good moral character not already a licensed dental hygienist of this state, being a graduate of an accredited high school or its equivalent, who is a graduate of a school of dental hygiene approved or provisionally approved by the council on education of the American dental association, upon making application for such license and upon the payment of ~~thirty-five~~ forty dollars, may be examined by the North Dakota state board of dental examiners on the subjects considered essential by it for a dental hygienist. Such examinations shall be conducted by the board of dental examiners or by a designee of the board. If the applicant, in the opinion of the board, successfully passes ~~said~~ the examination, the applicant shall be registered and licensed as a dental hygienist. For such applicants as fail to pass a satisfactory initial examination, subsequent examinations may be had before the board upon payment of a fee of ~~ten~~ fifteen dollars for each subsequent examination, but no applicant shall be allowed to take more than three examinations. Applicants for examination shall submit their credentials to ~~said~~ the board at least thirty days prior to the examination date, which date shall correspond to the date of examination for applicants for license to practice dentistry in this state.

The North Dakota board of dental examiners may accept the results of the national board examination as the equivalent to the testing of an applicant by the North Dakota board of dental examiners in all areas covered by the national board examination.

SECTION 2. AMENDMENT. Section 43-20-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-06. LICENSE - FEES - DISPLAY. On or before January first of each year, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of such payment, the board, upon twenty days' notice, may revoke or suspend the license of the hygienist in default. The payment of such fee within such twenty-day period, with an additional sum of ~~ten~~ fifteen dollars, shall excuse the default. The board may collect such fee by suit. Such licensed hygienist must display conspicuously at the place of his employment his annual registration license.

SECTION 3. AMENDMENT. Section 43-20-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-07. DENTAL HYGIENISTS FROM OTHER STATES. Any dental hygienist duly licensed to practice as such in another state, and who is of good moral character and desirous of removing to this state, and deposits with the board of dental examiners a license from the examining board of the state in which he is licensed, certifying to the fact of his being licensed, and a letter from the secretary of the state dental association, or the secretary of the state dental hygienists association or organization, of such state, certifying that he is of good moral character and professional attainments, may upon the payment of a fee of ~~thirty-five~~ forty dollars, in the discretion of the board, and upon the satisfactory passing of such examinations as the said board shall deem necessary and proper, be granted a license to practice in this state. The board may, however, dispense with examining such an applicant if the state in which the applicant was previously licensed grants reciprocity to dental hygienists licensed in the state of North Dakota.

\* SECTION 4. AMENDMENT. Section 43-28-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-05. MEETING OF BOARD - OFFICERS - BOND - COMPENSATION OF MEMBERS - QUORUM. The board shall hold a regular annual meeting, at such place as is designated by it and such special meetings as are necessary. At the regular meeting of the board, the members shall elect from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation the sum of ~~seventy-five~~ eighty-five dollars for each day actually engaged in the duties of his office, ~~fifteen~~

\* NOTE: Section 43-28-05 was also amended by section 4 of House Bill No. 1226, chapter 450.

twenty cents per mile [1.61 kilometers] for the distance necessarily traveled in going to and returning from meetings of the board, and not to exceed actual expenses per day for meals and lodging while attending meetings of the board. The secretary-treasurer shall be paid an annual salary equal to fifteen percent of all funds received by the board during the year. ~~Three~~ Four members of the board shall constitute a quorum but a smaller number may adjourn from time to time.

\* SECTION 5. AMENDMENT. Section 43-28-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-11. EXAMINATION REQUIRED - APPLICATION - QUALIFICATIONS - FEES. Any person who desires to obtain a license to practice dentistry in this state shall make application to the secretary-treasurer of the board on such forms as it may provide and shall submit to an examination by the board. The application shall be verified under oath to the effect that all of the statements contained therein are true of applicant's own knowledge. Applicant shall enclose with his application a recent autographed picture of himself and the sum of ~~seventy-five~~ one hundred fifty dollars. Additional costs of simultaneous examination 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 must show proof that he has the following qualifications:

1. Is a graduate of a dental college recognized by the board.
2. ~~Is--a--citizen--of--the--United--States--or--has--filed--a--declaration--of--his--intention--to--become--a--citizen--of--the--United--States--and--that--his--application--for--naturalization--has--been--approved--by--the--proper--authorities.~~
- 3- Is a person of good moral character.

SECTION 6. AMENDMENT. Section 43-28-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-12.1. SIMULTANEOUS EXAMINATION. The results of an examination given in another state by that state's equivalent to the North Dakota board of dental examiners may be considered by this state's board as an example of the applicant's fitness to practice dentistry in this state. The other state examination must be observed by a member of this state's board, or by a designee of the board.

SECTION 7. AMENDMENT. Section 43-28-12.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-12.2. CONTINUING EDUCATIONAL REQUIREMENT FOR DENTISTS. Five years from July 1, 1971, or upon the fifth anniversary of the issuance of his license, whichever occurs last, and each five years thereafter, each person licensed to practice dentistry in this state

\* NOTE: Section 43-28-11 was also amended by section 14 of Senate Bill No. 2349, chapter 435.

shall provide the board evidence, of a nature suitable to the board, that such licensed person has attended, or participated in such amount of continuing education in dentistry as shall be required by the board. The minimum requirement shall be not less than ~~twenty~~ fifty hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other such evidence of continuing education the board may approve.

Any licensed dentist who ~~shall fail~~ fails to comply with this requirement shall, at the discretion of the board, be reexamined to determine his competency to continue licensure. If, in the opinion of the board, such licensed dentist does not qualify for further licensed practice, the board shall suspend such license until such time as the dentist shall provide acceptable evidence to the board of his competency to practice.

SECTION 8. AMENDMENT. Subsection 3 of section 43-28-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Pays to the board a fee of ~~seventy-five~~ one hundred fifty dollars.

SECTION 9. AMENDMENT. Section 43-28-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-16. CERTIFICATE - TERM - DISPLAYED IN PLACE OF BUSINESS - RENEWAL - FEE. A certificate of registration issued under the provisions of this chapter shall be valid for only one year and shall be renewed on or before the first day of January in each year. The fee for renewal of the certificate shall not exceed ~~fifty~~ seventy-five dollars. The holder of a license and certificate of registration shall display the same conspicuously in his place of business. The certificate of registration or the renewal thereof, shall be 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 10. AMENDMENT. Section 43-28-17 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-17. FAILURE TO PAY ANNUAL FEE - REVOCATION OF LICENSE. Whenever a licensed dentist fails to pay the annual fee for the renewal of his certificate of registration, after thirty days' written notice of such default, the board may revoke his license to practice dentistry forthwith and notify such dentist thereof. The payment of the annual fee within the thirty-day period, with an additional sum of ~~twenty-five~~ fifty dollars, will excuse the default.

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

43-28-18. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE AND CERTIFICATE. The board may revoke or suspend the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional or immoral conduct<sub>↑</sub>.
2. ~~Been denied admission to citizenship in the United States~~<sub>↑</sub>.
- 3~~→~~. 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 dentist, or the board determines, following conviction for any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1<sub>↑</sub>.
- 4~~→~~ 3. ~~Has--been~~ Been adjudged mentally ill and not judicially restored by the regularly constituted authorities<sub>↑</sub>.
- 5~~→~~ 4. Been guilty of habitual intemperance or addicted to the use of drugs<sub>↑</sub>.
- 6~~→~~ 5. Employed or permitted unlicensed persons to practice dentistry in the office under his control<sub>↑</sub>.
- 7~~→~~ 6. Become grossly negligent in the practice of his profession<sub>↑</sub>.
- 8~~→~~ 7. Practiced fraud and deceit in obtaining his license or in the practice of dentistry<sub>↑</sub>.
- 9~~→~~ 8. Employed a solicitor or agent to obtain business<sub>↑</sub>.
- 10~~→~~ 9. Willfully betrayed confidential relations<sub>↑</sub>.
- 11~~→~~ 10. Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners; provided, however, that a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of such association<sub>↑</sub>.

\* NOTE: Section 43-28-18 was also amended by section 15 of Senate Bill No. 2349, chapter 435.

- 12- 11. Shared any professional fee with anyone or paid anyone for sending or referring patients to him, provided, however, that this shall 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.
- 13- ~~Given a public demonstration of any dental operation under any circumstances, except such as may be approved by the board.~~
- 14- 12. Used any advertising of any character tending to mislead and deceive the public.
- 15- 13. ~~Used any advertising in which reference is made to the character or quality of the services performed or to be performed, to the materials or medicines used by him or to any price, cost, charge, fee or terms of credit for services performed or for materials used.~~
- 16- ~~Used a display sign in a larger area than six hundred square inches {2970.96 square centimeters} or containing letters more than six inches {15.24 centimeters} in height.~~
- 17- ~~Used artificial lighting or illumination of any kind as a part of a sign or which has the effect of making any sign more prominent or conspicuous.~~
- 18- ~~Advertised any free dental work, free examination, free consultation, a guarantee of any dental services, or the painless performance of any dental operation.~~
- 19- ~~Used in connection with any advertising any artificial teeth, dentures or any representation of a teeth, teeth, bridgework or any portion of the human head.~~
- 20- ~~Used any newspaper advertising except a professional card in the local press, or in programs, year books and other similar publications, which do not occupy more space than four column inches {10.16 centimeters} and which do not include more than the dentist's name, title, address, telephone number and office hours, provided that a dentist who has a specialty may announce that fact if he has been authorized to do so by the board.~~
- 21- ~~Controls or owns~~ Controlled or owned, or presently controls or owns a dental laboratory or X-ray laboratory, or operates the same in connection with his office, and has advertised such dental or X-ray laboratory in a manner prohibited herein.

- ~~22-~~ 14. Made any false or untrue statements in his application for an examination to obtain a license to practice dentistry?.
- ~~23-~~ 15. Made any false representations that he is the holder of a license or certificate of registration to practice dentistry?.
- ~~24-~~ 16. Made any false claims that he is a graduate of a dental college or the holder of any diploma or degree from such college?~~and.~~
- ~~25-~~ 17. Violated any of the provisions of this chapter.

SECTION 12. AMENDMENT. Section 43-28-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-22. REINSTATEMENT OF LICENSE - RENEWAL OF CERTIFICATE - WHEN ISSUED - FEES. No dentist shall be reinstated, and no license and certificate of registration shall be reissued, except on the following conditions:

1. Where the license and certificate of registration have been revoked for cause upon one or more of the grounds specified in this chapter, a dentist may be reinstated only:
  - a. Upon application to the board for reexamination.
  - b. Upon payment of examination fees required by this chapter.
  - c. Upon successfully passing said reexamination.
  - d. Upon payment of an additional administrative fee to be fixed by the board, which shall not exceed  ~~fifty~~ seventy-five dollars.
2. Where the license and certificate of registration has been revoked for nonpayment of annual registration fees required by this chapter, said dentist may be reinstated upon payment to the board of the amount of renewal fees then in default, with an additional administrative fee to be fixed by the board not to exceed  ~~fifty~~ seventy-five dollars; provided, however, that the board after an investigation, may require a dentist whose license has been revoked for nonpayment of the annual registration fee to submit to a reexamination as to his qualification to practice dentistry before he is reinstated, if the board in the exercise of its discretion finds and determines that the best interests of the public, and the applicant, will be served thereby.

SECTION 13. AMENDMENT. Section 43-28-24 of the North Dakota Century Code is hereby amended and reenacted to read 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 applicant of the loss or destruction thereof. The fee for such duplicate license shall be ~~ten~~ twenty dollars and the fee for issuing a duplicate certificate of registration shall be ~~five~~ ten dollars.

Approved March 12, 1981

## CHAPTER 446

SENATE BILL NO. 2381  
(Olin)

### OIL AND GAS BROKER REGISTRATION

AN ACT to repeal chapter 43-22 of the North Dakota Century Code, relating to the registration, bonding, and activities of persons engaged in the business of buying leases, mineral rights, royalties, or other interests in oil or gas properties and certain other described minerals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 43-22 of the North Dakota Century Code is hereby repealed.

Approved March 25, 1981

## CHAPTER 447

HOUSE BILL NO. 1162  
(Committee on Industry, Business, and Labor)  
(At the request of the Real Estate Commission)

## REAL ESTATE LICENSE AND TRUST FUND STANDARDS

AN ACT to amend and reenact section 43-23-04, subsection 2 of section 43-23-08, and section 43-23-14.1 of the North Dakota Century Code, relating to compensation of the North Dakota real estate commission, license standards for real estate brokers and salesmen, and handling of funds by brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-04. COMMISSION - COMPENSATION. The members of the commission shall receive ~~twenty-five~~ fifty dollars for each day actually engaged in the service of the commission and shall be paid actual and necessary traveling expenses to be paid only from the fund derived from fees collected in the administration of this chapter. All moneys or fees collected or received by the commission shall be deposited and disbursed in accordance with section 54-44-12.

\* SECTION 2. AMENDMENT. Subsection 2 of section 43-23-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In addition to the requirements established by subsection 1, an applicant for a broker's or salesman's license must be at least eighteen years of age ~~and shall be a citizen of the United States and a North Dakota resident.~~

SECTION 3. AMENDMENT. Section 43-23-14.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-14.1. HANDLING OF FUNDS BY BROKERS. Every broker shall, at all times, maintain in his name or firm name, a separate trust account designated as such in a federally insured ~~bank or other federally insured depository~~ financial institution in this

\* NOTE: Subsection 2 of section 43-23-08 was also amended by section 10 of Senate Bill No. 2349, chapter 435.

state in which he shall immediately place as a demand deposit all funds not his own coming into his possession, including in accordance with rules and regulations promulgated by the commission. This requirement shall extend to funds in which he may have some future interest or claim and ~~including~~ shall include, but not be limited to, earnest money deposits. Provided, the deposit of funds may be made in an interest-bearing account in a federally insured bank, trust company, savings and loan association or credit union if all parties having an interest in the funds have so agreed in writing and if a copy of the agreement is maintained on file by the broker. No broker shall commingle his personal funds or other funds in a trust account, except that a broker may deposit and keep a sum not to exceed one hundred dollars in such account from his personal funds, which sum shall be specifically identified and deposited to cover service charges related to the trust account. In conjunction with such account, he shall maintain at his usual place of business, books, records, contracts and other necessary documents so that the adequacy of such account may be determined at any time. Trust accounts and other records shall be open to inspection by the commission and its duly authorized agents at all times during regular business hours at the broker's usual place of business.

Approved March 2, 1981

## CHAPTER 448

HOUSE BILL NO. 1287  
(Wald, Goetz)

## REAL ESTATE LICENSE REQUIREMENT

AN ACT to amend and reenact section 43-23-05 of the North Dakota Century Code, relating to the real estate license required for a partnership, association, or corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-05. REAL ESTATE LICENSE REQUIRED. No person shall act as a real estate broker, real estate salesman, or mortgage broker or advertise or assume to act as such real estate broker, real estate salesman, or mortgage broker without a license issued by the real estate commission. No person shall be entitled to collect any fees, compensation, or commission as a real estate broker, real estate salesman, or mortgage broker without having first complied with the provisions of this chapter. No copartnership, association, or corporation shall be granted a license, unless every member at least one partner, shareholder, or officer of such the copartnership, association, or corporation, actually engaged as a real estate broker, real estate salesman, or mortgage broker as defined herein, shall hold a license as a real estate broker, and unless every employee who acts as a real estate salesman or mortgage broker for such copartnership, association, or corporation shall hold a license as a real estate salesman or mortgage broker.

Approved February 20, 1981

## CHAPTER 449

HOUSE BILL NO. 1288  
(Representatives Unhjem, Hughes, Mushik)  
(Senators Goodman, Hanson)

## CONTINUING EDUCATION REQUIREMENTS FOR REALTORS

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to continuing education requirements for real estate brokers and salesmen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

LICENSE RENEWAL - CONTINUING EDUCATION REQUIRED. Commencing January 1, 1984, and every three years thereafter, each applicant for renewal of a broker's or salesman's license shall, in addition to the requirements of section 43-23-08, submit proof of participation in not less than twenty-four hours of approved continuing education. If a broker or salesman will not have been licensed three years on the date he or she is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules promulgated by the commission. 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 shall not require passing of a test to qualify for satisfaction of this requirement. Licensees shall 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 shall 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.

No license shall 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 on or before the thirty-first day of December immediately preceding the year for which the license is

issued. Any licensee failing to comply with this section shall not engage in any activity for which a license is required under this chapter, and any license not renewed by the thirty-first day of March of the year for which the license is issued shall be declared forfeit and canceled by the commission. Any person whose license has been forfeited and canceled and who desires relicensure shall be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules and regulations of the commission.

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, shall be exempt from the requirements of this section.

Approved March 26, 1981

## CHAPTER 450

HOUSE BILL NO. 1226  
(Representative Eagles)  
(Senator Cussons)

### BOARD OF DENTAL EXAMINERS

AN ACT to amend and reenact sections 43-28-02, 43-28-03, 43-28-04, and 43-28-05 of the North Dakota Century Code, relating to the state board of dental examiners and providing for one member of the board to be a dental hygienist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-02. EXCEPTIONS. The provisions of this chapter shall not apply:

1. To the filling of written prescriptions of a licensed and registered dentist by any person or legal entity, for the construction, reproduction or repair of prosthetic dentures, bridges, plates or appliances, to be used or worn as substitutes for natural teeth, provided, that such person or legal entity shall not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television or otherwise to the general public to construct, reproduce, repair prosthetic dentures, bridges, plates or other appliances to be used or worn as substitutes for natural teeth.
2. To students enrolled in and regularly attending any dental college recognized as such by the board, if their acts are done in dental college and under the direct supervision of their instructor; or to students who are in training in dental colleges recognized as such by the board and who are continuing their training and performing the duties of an extern under the supervision of a licensed and registered dentist who has received approval to supervise such externships by the appropriate accrediting committee, including the North Dakota board of dental examiners.

3. To legally qualified and licensed physicians, surgeons, and other practitioners authorized by law, who perform any act defined herein as the practice of dentistry in emergency cases.
4. To a duly licensed and registered dentist of another state temporarily operating in this state as a clinician or lecturer under the auspices of a dental college, a reputable dental, dental hygienist or dental assistant society.
5. ~~To a dental hygienist, regularly licensed and registered who practices in the manner provided by this chapter.~~
6. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, public health service, coast guard, veterans bureau or director of the dental division of the North Dakota state health department.

SECTION 2. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-03. STATE BOARD OF DENTAL EXAMINERS - MEMBERS - APPOINTMENT - TERMS OF OFFICE - OATH - VACANCIES. The state board of dental examiners shall consist of ~~five~~ six members to be appointed by the governor. The membership of the board shall include five dentist members and one dental hygienist member. Appointment to the board shall be for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there will be two new board members appointed, one of whom shall be a dentist and the other a dental hygienist. The first five-year term of the dental hygienist will commence on July 1, 1981, and continue through March 15, 1986. Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member shall serve more than one entire five-year term of office, and any member who has not served an entire five-year term may be reappointed to the board. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board shall be filled by the governor by appointment.

\* SECTION 3. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-04. QUALIFICATIONS AND APPOINTMENT OF MEMBERS OF THE BOARD - LIMITED VOTE.

1. No person shall be appointed as a dentist member of the board unless that person:
  - 1- a. Is a duly licensed and registered dentist.

\* NOTE: Section 43-28-04 was also amended by section 13 of Senate Bill No. 2349, chapter 435.

- 2- b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding his appointment.
- 3- c. Is recommended for such appointment by the North Dakota dental association.
- 4- d. Never has served as a member of the board for an entire five-year term.

At least ninety days before the expiration of a term of any dentist member of the board, the North Dakota dental association shall make its recommendation to the governor. Not less than three candidates shall be recommended for each appointment. If the recommendations are not made in the required time, the governor shall make the appointment from the last recommendations of the association.

2. No person shall be appointed as the dental hygienist member of the board unless that person:
  - a. Is a duly licensed and registered dental hygienist in accordance with the provisions of chapter 43-20.
  - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
  - c. Never has served as a member of the board for an entire five-year term.
3. The dental hygienist member of the board shall exercise full voting privileges in all areas with the following exceptions:
  - a. The issuance, suspension, and revocation of dental licenses;
  - b. Any disciplinary action taken against dentists; and
  - c. The examination of dentists for licensure.

\* SECTION 4. AMENDMENT. Section 43-28-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-05. MEETING OF BOARD - OFFICERS - BOND - COMPENSATION OF MEMBERS - QUORUM. The board shall hold a regular annual meeting, at such place as is designated by it and such special meetings as are necessary. At the regular meeting of the board, the members shall elect from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer shall furnish a bond in the amount fixed by the board. Each member of the board shall

\* NOTE: Section 43-28-05 was also amended by section 4 of House Bill No. 1580, chapter 445.

receive as compensation the sum of seventy-five dollars for each day actually engaged in the duties of his office, fifteen cents per mile [1.61 kilometers] for the distance necessarily traveled in going to and returning from meetings of the board, and not to exceed actual expenses per day for meals and lodging while attending meetings of the board. The secretary-treasurer shall be paid an annual salary equal to fifteen percent of all funds received by the board during the year. ~~Three~~ Four members of the board shall constitute a quorum but a smaller number may adjourn from time to time.

Approved March 3, 1981