

VETOED MEASURES

CHAPTER 775

HOUSE BILL NO. 1071
(Dorso)

IMPORTER FOR USE TAX COLLECTION AGREEMENTS

AN ACT to create and enact a new subsection to section 57-43.1-01, two new sections to chapter 57-43.1, a new subsection to section 57-43.2-01, and two new sections to chapter 57-43.2 of the North Dakota Century Code, relating to cooperative agreements that may be entered into by the registrar of motor vehicles with other states for exchange of information and auditing of users of motor fuels and special fuels used in fleets of motor vehicles that operate interstate and collection and administration of importer for use tax provisions by the registrar of motor vehicles; to amend and reenact sections 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40, 57-43.1-41, 57-43.1-43, 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, 57-43.2-33, 57-43.2-34, and 57-43.2-36 of the North Dakota Century Code, relating to collection and administration of importer for use taxes by the registrar of motor vehicles; and to provide an effective date.

VETO

April 18, 1989

The Honorable William Kretschmar
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1071 provides for the implementation of the interstate fuel tax agreement.

Amendments are being prepared to Senate Bill 2243 to make the language currently in this bill compatible with the Department of Transportation bill language and to combine, for two years, the expertise of the offices of the Motor Vehicle Registrar and the Tax Commissioner to develop the program.

That language will be helpful and a technical improvement over the language currently in House Bill 1071.

Therefore, I veto House Bill 1071.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-43.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Registrar" means the registrar of motor vehicles.

SECTION 2. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administration and collection of importer for use taxes by registrar. The registrar shall administer the importer for use taxes under the provisions of sections 57-43.1-33 through 57-43.1-43 and, for the purposes of the importer for use tax provisions, shall have all of the authority provided to the tax commissioner under sections 57-43.1-01 through 57-43.1-32.

SECTION 3. AMENDMENT. Section 57-43.1-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-36. Importer for use license required. Before any person imports fuel into this state in the fuel supply tank of any motor vehicle, that person shall file application for and obtain an importer for use license. Persons exempted from the tax levied under section 57-43.1-33 are not required to obtain such license. All applications for an importer for use license must be on forms furnished by the commissioner registrar and must contain such information as the commissioner registrar requires.

SECTION 4. AMENDMENT. Section 57-43.1-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-37. Issuance and display. If the commissioner registrar finds the statements in the application to be true, and if the commissioner registrar is satisfied that the application is made in good faith, the commissioner registrar shall issue to the applicant an importer for use license bearing a distinctive number and specifying the terms of the license. The license or a photocopy of the license must be carried in the passenger compartment of each motor vehicle operated by each importer for use at all times when the motor vehicle is in this state.

SECTION 5. AMENDMENT. Section 57-43.1-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-38. Assignment forbidden. A license issued by the commissioner registrar pursuant to this chapter is not subject to assignment or transfer, nor is such a license either a franchise or irrevocable.

SECTION 6. AMENDMENT. Section 57-43.1-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-39. Revocation, cancellation, and surrender of importer for use license. An importer for use license issued by the commissioner registrar is in force until the license is suspended, surrendered, or revoked for cause by the commissioner registrar. The commissioner registrar, upon

showing of failure to comply with the provisions of this chapter or rules adopted by the commissioner or the registrar under this chapter, may suspend or revoke any license issued under this chapter upon five days' notice to the grantee and on opportunity to be heard. If an importer for use license has been revoked for cause, the commissioner registrar may reinstate such license upon payment of a fifty dollar fee.

SECTION 7. AMENDMENT. Section 57-43.1-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-40. Occasional trip permits. Any person who occasionally makes trips into or through North Dakota and elects to secure occasional trip permits as provided in this section is exempt from the licensing requirements imposed upon importers for use. The word "occasionally" means no more than one trip in any seventy-two-hour period into or through the state. The commissioner registrar or the commissioner's registrar's agent shall issue occasional trip permits for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner registrar.

SECTION 8. AMENDMENT. Section 57-43.1-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-41. Authorization of the commissioner registrar. The commissioner registrar may issue authorization relieving fuel dealers of the duty of collecting the tax imposed under this chapter and chapter 57-43.2 from persons who are licensed as importers for use, and who consistently purchase from North Dakota fuel dealers more fuel than is consumed in the propulsion of their motor vehicles in this state.

SECTION 9. AMENDMENT. Section 57-43.1-43 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-43. Importer for use tax, reports, payments, records, penalties, disposition of funds, audits, and assessments.

1. Importers for use shall file a quarterly tax return with the commissioner registrar on forms prescribed by the commissioner registrar to determine the amount of tax liability or credit under this chapter. The importer for use shall file the return no later than the last day of the month next succeeding the last calendar month in the quarter. Importers for use shall be assessed penalty and interest and are subject to recordkeeping as provided in this chapter. The importer for use tax collected must be distributed as provided in this chapter.
2. The commissioner registrar shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.1-17.

SECTION 10. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperative agreements between states.

1. The registrar may enter into cooperative agreements with other states for exchange of information and auditing of users of motor

fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the registrar.

2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The registrar, may, as required by the terms of the agreement, forward to officers of another state any information in the registrar's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person. The registrar may disclose to officers of another state the location of officers, motor vehicles, and other real and personal property of users of motor fuels.
4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of motor fuels. For persons not based in this state and who have taxable use of motor fuel in this state, the registrar may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the registrar.
5. Any agreement entered under this section does not preclude the registrar from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the registrar.

SECTION 11. A new subsection to section 57-43.2-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Registrar" means the registrar of motor vehicles.

SECTION 12. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administration and collection of imported for use taxes by registrar. The registrar shall administer the importer for use taxes under the provisions of sections 57-43.2-26 through 57-43.2-36 and, for the purposes of the importer for use tax provisions, shall have all of the authority of the tax commissioner under sections 57-43.2-01 through 57-43.2-25.

SECTION 13. AMENDMENT. Section 57-43.2-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-29. Importer for use license required. Before any person imports fuel into this state in the fuel supply tank of any motor vehicle, that person shall file application for and obtain an importer for use license. Persons exempted from the tax levied under section 57-43.2-26 are not required to obtain such license. All applications for an importer for use license must be on forms furnished by the commissioner registrar and must contain such information as the commissioner registrar requires. If the license required by section 57-43.1-38 has been obtained, no license is required pursuant to this section.

SECTION 14. AMENDMENT. Section 57-43.2-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-30. Issuance and display. If the commissioner registrar finds the statements in the application to be true, and if the commissioner registrar is satisfied that the application is made in good faith, the commissioner registrar shall issue to the applicant an importer for use license bearing a distinctive number and specifying the terms of the license. The license or a photocopy of the license must be carried in the passenger compartment of each motor vehicle operated by each importer for use at all times when the motor vehicle is in this state.

SECTION 15. AMENDMENT. Section 57-43.2-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-31. Assignment forbidden. A license issued by the commissioner registrar pursuant to this chapter is not subject to assignment or transfer, nor is such a license either a franchise or irrevocable.

SECTION 16. AMENDMENT. Section 57-43.2-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-32. Revocation, cancellation, and surrender of importer for use license. An importer for use license issued by the commissioner registrar is in force until the license is suspended, surrendered, or revoked for cause by the commissioner registrar. The commissioner registrar, upon showing of failure to comply with the provisions of this chapter or rules adopted by the commissioner or registrar under this chapter, may suspend or revoke any license issued under this chapter upon five days' notice to the grantee and on opportunity to be heard. If an importer for use license has been revoked for cause, the commissioner registrar may reinstate such license upon payment of a fifty dollar fee.

SECTION 17. AMENDMENT. Section 57-43.2-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-33. Occasional trip permits. Any person who occasionally makes trips into or through North Dakota and elects to secure occasional trip permits as provided in this section is exempt from the licensing requirements imposed upon importers for use. The word "occasionally" means no more than one trip in any seventy-two-hour period into or through the state. The commissioner registrar or the commissioner's registrar's agent shall issue occasional trip permits for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner registrar.

SECTION 18. AMENDMENT. Section 57-43.2-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-34. Authorization of the ~~commissioner~~ registrar. The ~~commissioner~~ registrar may issue authorization relieving fuel dealers of the duty of collecting the tax imposed under this chapter and chapter 57-43.1 from persons who are licensed as importers for use, and who consistently purchase from North Dakota fuel dealers more fuel than is consumed in the propulsion of their motor vehicles in this state.

SECTION 19. AMENDMENT. Section 57-43.2-36 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-36. Importer for use tax reports, payments, records, penalties, disposition of funds, audits, and assessments.

1. Importers for use shall file a quarterly tax return with the ~~commissioner~~ registrar on forms prescribed by the ~~commissioner~~ registrar to determine the amount of tax liability or credit under this chapter. The importer for use shall file the return no later than the last day of the month next succeeding the last calendar month in the quarter. Importers for use shall be assessed penalty and interest and are subject to recordkeeping as provided in this chapter. The importer for use tax collected must be distributed as provided in this chapter.
2. The ~~commissioner~~ registrar shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.

SECTION 20. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperative agreements between states.

1. The registrar may enter into cooperative agreements with other states for exchange of information and auditing of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the registrar.
2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of special fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The registrar, may, as required by the terms of the agreement, forward to officers of another state any information in the registrar's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of special fuels by any person. The registrar may disclose to officers of another state the location of officers, motor vehicles, and other real and personal property of users of special fuels.

4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the special fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of special fuels. For persons not based in this state and who have taxable use of special fuel in this state, the registrar may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the registrar.
5. Any agreement entered under this section does not preclude the registrar from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the registrar.

SECTION 21. EFFECTIVE DATE. This Act becomes effective on July 1, 1990.

Disapproved April 18, 1989
Filed April 21, 1989

CHAPTER 776

HOUSE BILL NO. 1076
(Representatives Wentz, Payne)
(Senator Dotzenrod)

INJURY REPORTS

AN ACT to amend and reenact subsections 1 and 2 of section 43-17-41 of the North Dakota Century Code, relating to duty of physicians and others to report injuries.

VETO

April 7, 1989

The Honorable William Kretschmar
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1076 would amend N.D.C.C. Section 43-17-41 which presently provides for the duty of physicians or other medical or mental health professionals to report any person they treat that may be suffering from any self-inflicted injuries or injuries inflicted by another in violation of any criminal law. House Bill 1076 would exempt from this reporting requirement a suspected violation of the DUI law as long as there are no additional persons injured, other than the driver.

Driving while under the influence of alcohol or other drugs is a very serious offense in our state as evidenced by the nearly 3,000 persons arrested per year for this violation. Furthermore, nearly one-half of all traffic fatalities in our state continue to have measurable amounts of alcohol or other drugs. To eliminate the responsibility of physicians and other medical and mental health professionals from reporting these offenders could seriously jeopardize our DUI enforcement efforts by delaying or even preventing a timely investigation of the facts and circumstances of an automobile accident.

Furthermore, forcing medical professionals to determine the possibility of other victims being at risk is not appropriate. Timely investigations of the scene of an accident save relevant evidence and more importantly enable a quick on-site investigation to accurately determine whether other individuals were injured.

Finally, N.D.C.C. Section 43-17-41, without these amendments, has served the criminal justice community well since it was initially enacted in 1977.

Therefore, I veto House Bill 1076.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 43-17-41 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Any physician or other medical or mental health professional, who ~~has under his charge or care or~~ performs any professional services for any person suffering from any wound, injury, or other physical trauma inflicted by ~~his that person's~~ own act or by the act of another by means of a knife, gun, or pistol, or which ~~he the health care professional~~ has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the same to the sheriff ~~or state's attorney~~ of the county ~~or a police officer of the city~~ in which ~~such care was the professional services were~~ rendered. The report shall state the name of the injured person, if known, ~~his that person's~~ whereabouts, and the character and extent of ~~his that person's~~ injuries. However, any report concerning injuries sustained from the operation of a motor vehicle need not be filed if there is a suspected violation of section 39-08-01 and there are no persons injured, other than the driver.
2. The reports mandated by this section ~~shall~~ must be made as soon as practicable and may be either oral or in writing. Oral reports ~~shall~~ must be followed by written reports within forty-eight hours if so requested by the sheriff or ~~state's attorney~~ police officer to whom the oral report is originally made.

Disapproved April 7, 1989
Filed April 13, 1989

CHAPTER 777

HOUSE BILL NO. 1228
(Ulmer)

**HIGHER EDUCATION HANDICAPPED ACCESS
APPROPRIATION**

AN ACT to amend and reenact section 48-02-19 of the North Dakota Century Code, relating to access by the handicapped to institutions of higher education; to provide an appropriation; and to provide legislative intent regarding the funding of handicapped access projects in future bienniums.

VETO

April 11, 1989

The Honorable William Kretschmar
Speaker of the House
House Chambers
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

I have signed HB 1228, the substance of which I heartily endorse. Section 2, the appropriation section, however, I believe could be better covered under the bonding authority provided in another bill.

Therefore, I am vetoing Section 2 of this bill and I am recommending the inclusion of funding authority in a bonding bill.

Sincerely,

George A. Sinner
Governor

Disapproved April 11, 1989
Filed April 17, 1989

NOTE: For the full text of House Bill No. 1228, containing section 2, see chapter 563.

CHAPTER 778

HOUSE BILL NO. 1254
(Representatives D. Olsen, A. Olson, Hoffner)
(Senators O'Connell, Tennefos, Tallackson)

TEACHER PERSONNEL FILE CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 15-38.2 of the North Dakota Century Code, relating to access to teachers' personnel files; to amend and reenact sections 15-29-10 and 15-51-10 of the North Dakota Century Code, relating to school district and school board records; and to provide a penalty.

VETO

April 10, 1989

The Honorable William Kretschmar
Speaker of the House
House Chambers
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

Quality education is fundamental to economic and social progress.

Around the country, states are using open enrollment, teacher and student testing, greater educational requirements for teachers and a myriad of other methods to promote accountability, to ensure that education continues to serve our needs in an era of global competition.

In recent years, national studies on education reform, particularly those of the National Governors' Association and the Carnegie Foundation, have emphasized the need for accountability. Teachers, administrators, school boards and students need to be accountable to parents and the public for performance -- or lack of performance.

Open records help assure the accountability in North Dakota. And, if there have been any abuses resulting from open records, they have been few and infrequent. In fact, in some instances, an individual's rights and interests are protected by keeping such records open. Closing records implies that there is something to hide. No such implication is justified in North Dakota.

Further, there are many other public employees who may want the same secrecy sought in this bill. If the trend in this bill continues, no public

employee's records will be available for scrutiny by the public, which those employees serve.

In the end, this is not so much an issue of privacy vs. the public's right to know as it is an issue of accountability. And one way to help ensure accountability is that teachers' and administrators' records and school board meeting records remain open for public review. The records are, after all, not 'personal' files, but 'personnel' files. Given the critical role of education and the high percentage of public money expended on it, this bill moves in exactly the wrong direction.

Clearly we must get better pay for teachers. To do that, public confidence must be ensured.

Therefore, I veto HB 1254.

Sincerely,

George A. Sinner
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-29-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-10. District records open to examination - Records as evidence. ~~The~~ Except as provided in section 2 of this Act, the records, vouchers, and papers of the district are open to examination by any taxpayer of the district. These records, or a transcript thereof certified by the business manager, must be received in all courts as prima facie evidence of the facts therein set forth.

SECTION 2. A new section to chapter 15-38.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Teacher's personnel file - Access - Penalty. The personnel file of a teacher is not open for public inspection under section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. This section does not prevent a teacher with respect to that teacher's file or that teacher's direct supervisor, principal, superintendent, or school board from having access to a teacher's file. As used in this section, teacher includes all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, including state institutions of higher education. Any person who violates this section is guilty of an infraction and is not subject to the penalty provided by section 12.1-13-01.

SECTION 3. AMENDMENT. Section 15-51-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-51-10. Secretary, duties - Record as evidence - Inspection. The ~~said~~ board of education shall elect a secretary, who shall hold ~~his~~ office ~~during~~ at the pleasure of the board, and whose compensation ~~shall~~ must be fixed by the board. The secretary shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The

said record of the proceedings or a transcript thereof of the record, certified by the secretary and attested by the seal of the board, shall must be received in all courts as prima facie evidence of the facts therein set forth, and such record and all the books, accounts, vouchers, and papers of said the board, at all times, shall be except as provided in section 2 of this Act, are subject to the inspection of the city council or any committee thereof or any taxpayer, or resident of said city.

Disapproved April 10, 1989
Filed April 13, 1989

CHAPTER 779

HOUSE BILL NO. 1320
(R. Berg)

GROUNDS FOR EVICTION

AN ACT to create and enact a new subsection to section 33-06-01 and a new section to chapter 33-06 of the North Dakota Century Code, relating to grounds for eviction and eviction orders.

VETO

April 14, 1989

The Honorable William Kretschmar
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1320 amends Section 33-06-01 of the North Dakota Century Code to allow the eviction of a tenant if there is a direct or indirect disturbance of the peace. It also provides that a court must evict the tenant immediately, unless the eviction would cause a substantial hardship to the tenant. Upon a showing of substantial hardship, the court may allow the tenant to remain on the premises for a reasonable period not to exceed fifteen days if the eviction is for failure to pay rent, and, in all other cases, the period before eviction must not exceed five days.

The use of the word "indirect", as it refers to a disturbance of the peace, is very ambiguous. The nature of apartment living lends itself to a variety of situations that could be construed as "indirect" disturbances. It is not difficult to imagine a number of circumstances that could be considered "indirect" disturbances but, in fairness, would not warrant the severe remedy of an eviction.

An ambiguity of this nature could lead to abuse by both landlords and other tenants. Rather than impose this uncertainty on all landlords and tenants, it is better to allow them the opportunity to tailor the terms and conditions of a lease and choose the appropriate remedies for a breach.

The problem of ambiguity is aggravated by the provision demanding the court to limit the time frame in which the eviction must take place. The varied circumstances surrounding the eviction require flexibility, not a rigid rule. I have great confidence in the ability of the judges of North Dakota to

fashion a remedy that will serve the interests of justice and protect landlords and tenants. I do not believe it is proper to tie the hands of judges, particularly where it could lead to such serious consequences. The eviction of a tenant from his or her home under any circumstance may have a significant impact on the life of the tenant and a tenant's family and should be given careful consideration.

Therefore, I veto HB 1320.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 33-06-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A party directly or indirectly disturbs the peace of other tenants or residents.

SECTION 2. A new section to chapter 33-06 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Judgment of eviction - Execution. If the court finds for the plaintiff, the court shall immediately enter judgment that the plaintiff have possession of the premises. The court shall immediately issue a writ of restitution, unless the defendant demonstrates that immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family. Upon a showing of substantial hardship, the court may allow the tenant to remain on the premises for a reasonable period not to exceed fifteen days if the eviction is for failure to pay rent, and in all other cases, not to exceed five days.

Disapproved April 14, 1989
Filed April 20, 1989

CHAPTER 780

HOUSE BILL NO. 1520
(Melby, Huether)

HEALTH COUNCIL MEMBERSHIP

AN ACT to amend and reenact section 23-01-02 of the North Dakota Century Code, relating to the health council membership.

VETO

March 22, 1989

The Honorable William Kretschmar
Speaker of the House
House Chamber
State Capitol Building
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1520 adds a representative of the state long-term care association to the Health Council, thereby increasing the number of health care health council members from 15 to 16 and increasing the number of provider representatives from eight to nine.

I have no objection whatsoever to having a long-term care association representative on the Health Council.

However, the Health Council, with 15 members, is currently large enough. Continuing to add new members will simply make the Health Council an unwieldy body.

In addition, with 15 members, the Health Council now has one more provider than consumer. I would much prefer to see a consumer dominance on the Health Council. This bill adds to the provider dominance of the Health Council.

In an era when health care costs continue to increase significantly, when health care access is becoming a major problem and when thousands of North Dakotans are unable to even afford health insurance, consumer concerns and influence should be strengthened, not lessened.

Finally, having a council consisting of an even-number of members would make it even more difficult by causing tie votes without authority for the state health officer or anyone else to break ties.

Therefore, I veto House Bill 1520.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of ~~fifteen~~ sixteen members appointed by the governor in the following manner: Two persons ~~shall~~ must be appointed from a list of four submitted by the state hospital association, two persons ~~shall~~ must be appointed from a list of four submitted by the state medical association, one person ~~shall~~ must be appointed from a list of two submitted by the state dental association, one person ~~shall~~ must be appointed from a list of two submitted by the state optometric association, one person ~~shall~~ must be appointed from a list of two submitted by the state nurses association, one person ~~shall~~ must be appointed from a list of two submitted by the state pharmaceutical association, one person must be appointed from a list of two submitted by the state long-term care association, and there ~~shall~~ must be appointed seven persons who are consumers of health care services and not employed in the health care field. One health care consumer member must be a representative of the business community, one health care consumer member must be a representative of the agriculture community, one health care consumer member must be a representative of organized labor, and one health care consumer member must be a representative of elderly citizens. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council ~~shall~~ must be elected annually. The following persons shall serve in an advisory capacity to the health council: the state health officer, the attorney general, the director of institutions, the state fire marshal, the executive secretary of the state board of nursing, the executive director of the department of human services, the executive director of the North Dakota Indian affairs commission, and any other persons the governor may designate. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The council shall have as standing committees a health committee and a hospital committee and any other committees the council may find necessary. The health committee consists of one of the representatives of the state medical association, one of the representatives of the state hospital association, the representative of the state dental association, the representative of the state optometric association, the representative of the state nurses association, the representative of the state long-term care association, and two of the health care consumer members. The hospital committee consists of the representatives of the state hospital association, one of the representatives of the state medical association, the representative of the state nurses association, and two of the health care consumer members. The members of these committees ~~shall~~ must be selected by the chairman of the health council from its own membership. The chairman ~~shall have~~ has the responsibility of assigning to the special committees problems relating to the respective fields. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as

provided in sections 54-06-09 and 44-08-04 while attending council meetings, or in the performance of such special duties as the council may direct. The per diem and expenses ~~shall~~ must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

Disapproved March 22, 1989
Filed April 13, 1989

CHAPTER 781

SENATE BILL NO. 2395
(Senators Nalewaja, Tennefos)
(Representative Rydell)

HOME CARE MINIMUM WAGE

AN ACT to create and enact a new section to chapter 34-06 of the North Dakota Century Code, relating to the application of wage and hour standards to persons providing companionship services, personal care services, and family home care.

VETO

April 15, 1989

The Honorable Lloyd B. Omdahl
President of the Senate
Senate Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2395 provides exemptions from minimum wage and hour standards for certain categories of workers.

It is probably appropriate to clarify that family members who provide family home care services for relatives who live in their homes are exempt from minimum wage and hour standards. And I could support such legislation.

This legislation, however, goes too far. Subsection 2 of this bill also exempts from any minimum wage and hour standards those who provide personal care services under county contracts. It could be read to exempt from any and all minimum wage and hour standards even private individuals, who under county contracts, hire other workers to provide personal care or family home care services.

Such provisions would probably save money for the state and political subdivisions but at the expense of a minimum standard of living for those decent enough to provide these much-needed services.

While I appreciate the concerns this bill attempts to address, I strongly believe that the state and political subdivisions need to provide the best example they can in this area.

Therefore, I veto Senate Bill 2395.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption for companionship and personal care services and family home care.

1. Employees who provide companionship services for individuals who, because of age or disability, are unable to care for themselves are exempt from any minimum wage and hour standards that may be prescribed under this chapter, to the extent that those companionship services are provided by an employee from ten p.m. to nine a.m., up to a total of eight hours, during which time the employee is available to perform duties for the aged or disabled individual, but is free to sleep and otherwise engage in normal private pursuits in the aged or disabled individual's home. Employees who provide companionship services are not entitled to any overtime premium that may be prescribed under this chapter.
2. Individuals who provide personal care services or family home care under written contract with a county social service board are exempt from any minimum wage and hour standards that may be prescribed under this chapter.
3. As used in this section:
 - a. "Companionship services" means those services that provide fellowship, care, and protection for individuals who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person, including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" do not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and do not include individuals who provide care and protection for infants and young children who are not physically or mentally disabled.
 - b. "Family home care" means family home care as defined in section 50-06.2-02.
 - c. "Personal care services" means personal care services as defined under the home and community-based waiver for the aged and disabled, secured by the department of human services pursuant to 42 U.S.C. 1396n(c).

Disapproved April 15, 1989

CHAPTER 782

SENATE BILL NO. 2332
(Senators Heinrich, Freborg, Nalewaja)
(Representatives Wentz, D. Larson)

MANDATORY CRIMINAL SENTENCING

AN ACT to amend and reenact subsection 9 of section 12.1-32-02, sections 12.1-32-02.1, 19-03.1-23, and 54-21-25 of the North Dakota Century Code, relating to sentencing alternatives, prison terms for certain offenders, penalties for unlawful manufacture, delivery, or possession of controlled substances, and authority to contract with other governmental agencies for prisoners and juvenile delinquents; to provide a penalty; and to provide an effective date.

VETO

April 28, 1989

Mr. Jim Kusler
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Kusler:

Senate Bill 2332 requires minimum and enhanced sentences in a variety of drug-related cases.

I firmly believe that judges are in the best position to address the unique cases that may come before them. Judges must impose strict sentences on those who are so evil as to maliciously prey on our children and young people, and they currently have all of the authority they need to do so.

However, I am especially concerned about first-time offenders for whom a jail or prison sentence, instead of providing any sort of rehabilitation, may only serve to confirm in them their worst instincts and result in lifetime criminals. All of us know that there are many cases--many people--who could have been saved had some form of alternative sentence been allowed and provided.

I believe in a system in which the judges who are present at trial, who have heard the evidence, who have available to them a pre-sentence investigation report and who have the input of the victims are able to make an appropriate decision which conforms to the criminal, the crime and the victim.

Furthermore, no appropriation has been provided to address the significant increase in prison sentences which are likely to result from this Bill. Corrections budgets in other states which have enacted mandatory sentences have gone out of control.

Therefore, I veto Senate Bill 2332.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. A person convicted of a felony who is sentenced to imprisonment for not more than one year ~~shall be~~ is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment, except a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-02.1. Minimum prison terms for armed offenders. Notwithstanding any other ~~provisions~~ provision of this title, minimum terms of imprisonment shall be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, he the offender inflicts or attempts to inflict bodily injury upon another, ~~or~~ threatens or menaces another with imminent bodily injury with a dangerous weapon, an explosive, or a firearm, or possesses or has within immediate reach and control a firearm, dangerous weapon, explosive, or destructive device while in the course of committing an offense provided by subsection 1 or 2 of section 19-03.1-23. Such minimum penalties shall apply only when possession of a dangerous weapon, an explosive, or a firearm has been charged and admitted or found to be true in the manner provided by law, and shall be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

SECTION 3. AMENDMENT. Section 19-03.1-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-23. Prohibited acts A - Mandatory imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance; ~~provided, that, but~~ any person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 ~~shall may~~ not be prosecuted under this subsection. ~~Any~~ Except when a person delivers a controlled substance without receiving remuneration or agreeing to receive remuneration for the controlled substance, the court may not suspend execution or defer imposition of any sentence imposed under subdivision a, b, or c of this subsection. However, the court may suspend execution of no more than one-half of any sentence imposed for a first offense under subdivision a, b, or c of this subsection. Subject to this requirement, any person, who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony and must be sentenced:
 - (1) For a first offense, to imprisonment for at least a year and a day.
 - (2) For a second offense, to imprisonment for at least five years.
 - (3) For a third or subsequent offense, to imprisonment for twenty years.
 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Any person found guilty under this subdivision must be sentenced:
 - (1) For a first offense, to imprisonment for at least eight months.
 - (2) For a second offense, to imprisonment for at least three years.
 - (3) For a third or subsequent offense, to imprisonment for ten years.
 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
 - (1) For a first offense, to imprisonment for at least six months.
 - (2) For a second offense, to imprisonment for at least one year.
 - (3) For a third or subsequent offense, to imprisonment for five years.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.

2. Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance; ~~provided, that, but any person whose conduct is in violation of who violates~~ section 12-46-24, 12-47-21, or 12-51-11 ~~shall~~ may not be prosecuted under this subsection. Any person, who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
 - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. In addition to any other penalty imposed under this section, a person who violates this chapter is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
 - a. Any person who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a four-year term of imprisonment. For a second or subsequent offense, the sentencing term required to be imposed must be eight years.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least four years, to be served without benefit of parole. For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years, to be served without benefit of parole. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
 - c. The court may not defer imposition of any sentence imposed under this subsection, but the court may suspend execution of no more than one-half of any sentence imposed under this subsection.
4. A person at least twenty-one years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled substance is guilty of a class B felony and must be sentenced:
 - a. For a first offense, to imprisonment for at least four years.

- b. For a second or subsequent offense, to imprisonment for at least five years.
- c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment.
6. It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his the practitioner's professional practice, or except as otherwise authorized by this chapter, provided, that, but any person whose conduct is in violation of who violates section 12-46-24, 12-47-21, or 12-51-11 shall may not be prosecuted under this subsection. Any person who violates this subsection is guilty of a class C felony, but if the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony; except that any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, shall be is guilty of a class A misdemeanor; and any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana shall be is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle shall be is guilty of a class A misdemeanor.
7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.
- ← 8. Notwithstanding the provisions of section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

SECTION 4. AMENDMENT. Section 54-21-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-21-25. Authority to contract with other governmental agencies for prisoners and juvenile delinquents. If the director of institutions the department of corrections and rehabilitation determines that adequate or suitable state facilities or services are not available for adult inmates or juvenile delinquents under his the director's control he the director may contract for same with the proper authorities of the United States, Canada, and any of its governmental subdivisions, another state, another agency in this state or a political subdivision of this state, or with any private or public correctional or treatment facility or agency. The state shall reimburse such entities at an amount to be determined by the state based upon the services the state determines are required for the housing and treatment of the inmates. The director may also contract, without cost to the state, to provide services or facilities for persons held by any of the jurisdictions mentioned in this section. An adult inmate or juvenile delinquent who is considered for transfer to another jurisdiction as herein provided; and who as an adult or as parent or guardian of a juvenile does not consent to the transfer; will be given notice of the pending transfer and a review by an institutional staff board including at least one member from the treatment staff; the security or housing staff; the administrative staff; and chaired by an individual designated by the director of institutions to determine the need and justification for a transfer. The findings of the review board will, if appropriate, be given to the adult inmate or juvenile delinquent or a representative or guardian; and in the case of adults; to the pardon board; and in the case of juveniles; to the designated juvenile court staff for their approval of the requested transfer. If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of institutions, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 1990.

Disapproved April 28, 1989
Filed April 28, 1989

CHAPTER 783

SENATE BILL NO. 2193
(Maxson)

INDEPENDENT ADMINISTRATIVE HEARING OFFICERS

AN ACT to create and enact a new section to chapter 28-32 of the North Dakota Century Code, relating to the appointment of independent administrative hearing officers.

VETO

April 28, 1989

Mr. Jim Kusler
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Kusler:

Senate Bill 2193 would provide for the appointment of an independent hearing officer at the request of one of the parties to a hearing before an administrative agency.

North Dakota has no system of administrative law judges, and no such system has been created by law. Nor has an appropriation been made for such a system.

I realize that we may need a system which is perceived as more fair to those who appear at hearings before state agencies. Such a system would provide for hearing officers who are not employees of the administrative agencies whose cases they hear.

Therefore, I intend to work with the Attorney General, other elected officials and my appointees to set in motion a pilot program in which the administrative law judges would be separate from state agencies.

If we can find an efficient, fair system that will work and is affordable, we will put it in place on a limited basis and report our results to the next session.

Therefore, I veto Senate Bill 2193.

Sincerely,

GEORGE A. SINNER

Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Independent hearing officer - Request - Appointment.

1. An administrative agency shall inform a respondent in the notice for hearing of the right to an independent hearing officer assigned by the attorney general if the respondent so requests in writing to the agency and the attorney general at the time of answering a complaint. The complainant or the agency may also request the assignment of an independent hearing officer, if made in writing within twenty days after service of a complaint by the agency. The agency shall make such a request to the attorney general.
2. The attorney general shall assign an employee of the executive branch who is not employed by the agency involved in the hearing to act as hearing officer. A hearing officer must have demonstrated knowledge of administrative procedures, although does not need to be legally trained, and must be free of any bias or prejudice that would impair the officer's ability to function officially in a fair and objective manner. The attorney general shall assign hearing officers so that no undue burden is placed on the personnel of any one agency.
3. The attorney general shall adopt rules to govern the procedural conduct of all hearings conducted by a hearing officer assigned under this section. Such procedural rules for hearings are binding upon all agencies and supersede any agency procedural rules which may be in conflict.
4. Hearing officers assigned under this section may:
 - a. Preside over hearings and advise the agency on matters of law.
 - b. Administer oaths and affirmations.
 - c. Examine witnesses.
 - d. Rule upon offers of proof and receive evidence.
 - e. Regulate the course and conduct of the hearing.
 - f. Hold conferences, before or during the hearing, for the simplification of the issues and for such other purposes as the demands of justice require.
 - g. Rule on motions and dispose of procedural requests or similar matters.
 - h. Prepare recommended findings of fact and conclusions of law for the agency involved in a hearing, but any final decision as a result of the hearing must be made by the agency involved.

- i. Institute contempt proceedings as provided by this chapter.
 - j. Exercise such other powers as are granted hearing officers pursuant to this chapter.
5. This section does not apply to the public service commission, the industrial commission, the state personnel board, or the central personnel division.

Disapproved April 28, 1989
Filed April 28, 1989

CHAPTER 784

SENATE BILL NO. 2192
(Maxson)

ADMINISTRATIVE HEARING OFFICER CHANGE

AN ACT to amend and reenact section 28-32-05 of the North Dakota Century Code, relating to a change of an administrative hearing officer.

VETO

April 28, 1989

Mr. Jim Kusler
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Kusler:

Senate Bill 2192 provides for a change of hearing officer at the request of any of the parties to a hearing before an administrative agency, with certain exceptions.

I appreciate the concerns which this Bill addresses. My veto message on Senate Bill 2193 also addresses some of those concerns more specifically.

However, I believe that, without an administrative law judge system, this requirement would be unworkable for many state agencies. It is also likely that it would have budget impacts which could be significant and for which no appropriations have been provided. And it would certainly result in delays of hearings.

Therefore, I veto Senate Bill 2192.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-05. Rules of procedure - Complaint - Notice of hearing - Filing and service. The following rules of procedure shall be observed by all administrative agencies in proceedings in which the same are applicable:

1. The complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of a proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies including reference to the statute or rule alleged to be violated, and the relief sought.
2. Upon filing of the complaint, the appropriate administrative agency shall serve a copy of the complaint and a notice for hearing upon the respondent personally or by certified mail, as the agency may direct, at least forty-five days before the time specified for hearing. Service may be waived in writing by the respondent, or the parties may agree upon a definite time and place for hearing with the consent of the agency having jurisdiction.
3. The notice for hearing ~~shall~~ must fix the time and place for trial upon the merits, must inform the respondent of the name of the officer, special examiner, chairman, or acting chairman before which the hearing is to be held, and ~~shall~~ must inform the respondent that an answer to the complaint must be served upon the complainant and agency giving the notice within twenty days after service of the complaint and notice for hearing, or the complaint will be deemed admitted, and the agency will enter such order as the facts and law may warrant. Except in proceedings before the public service commission, the industrial commission, the state personnel board, or the central personnel division, any party to the proceeding may obtain, without cause, one change of the officer, special examiner, chairman, or acting chairman before which the hearing is to be held. A demand for a change of the hearing officer must be made in writing to the appropriate administrative agency within ten days after service of the complaint and notice of hearing. Upon receipt of a timely demand for a change of the hearing officer, a new hearing officer must be assigned for the hearing, and notice of the new officer must be given to all parties. A demand for a change of the newly assigned hearing officer by a party not previously requesting a change of the hearing officer must be made within ten days of assignment. If necessary to allow adequate time for preparation for the hearing, the administrative agency may reschedule the hearing for a later date upon notice to all parties.
4. In an emergency the agency, in its discretion, may notice a proceeding for hearing upon the merits upon less than forty-five days' notice. Every party to such proceeding shall be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.
5. At the hearing, the respondent shall be afforded the same opportunity to present evidence and to examine and cross-examine witnesses as is permitted under section 28-32-06.

6. Unless otherwise precluded by law, informal disposition may be made of any contested case, or any issue therein, by stipulation, agreed settlement, consent order, or default subject to agency approval.
7. If the nature of the action does not involve a complaint and specific-named respondents, the above rules shall not apply. Unless specific provision for notice is otherwise provided for in this code or the rules of the agency, public notice of the hearing shall be given by publication in the official newspaper in the county or counties in which the subject matter involved is located. All rules must provide for at least fourteen days' notice before the hearing except in cases of emergency.

Disapproved April 28, 1989
Filed April 28, 1989