

**CHAPTER 33-31-03  
SALVAGED FOOD**

Section	
33-31-03-01	Definitions
33-31-03-02	Protection of Salvageable and Salvaged Merchandise
33-31-03-03	Reconditioning
33-31-03-04	Labeling Requirements
33-31-03-05	Recordkeeping Requirements
33-31-03-06	Salvage Processing Facilities and Distributors Outside the Jurisdiction of the Department
33-31-03-07	Salvaged Food Operator License Fee

**33-31-03-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Distressed food" means any food, the label of which has been lost, defaced, or obliterated; food that has been subjected to possible damage due to accident, fire, flood, adverse weather, or to any other similar cause; or food that is suspected of having been rendered unsafe or unsuitable for food use.
2. "Labeling" means any legal or descriptive matter or design appearing upon an article of food or its container, and includes circulars, pamphlets, and the like, which are packed and go with the article to the purchaser, and placards that may be allowed to be used to describe the food.
3. "Reconditioned or salvaged food" is reconditionable or salvageable food that has been reconditioned or salvaged under supervision of the department.
4. "Reconditioning" or "salvaging" is the act of cleaning, culling, sorting, labeling, relabeling, or in any other way treating distressed food so that it may be deemed to be reconditioned or salvaged food and therefore is acceptable for sale or use as human food, animal feed, or seed as provided by the department.
5. "Salvage food distributor" means a person who engages in the business of selling, distributing, or otherwise trafficking at wholesale in any distressed or salvaged food.
6. "Salvaged processing facility" means an establishment engaged in the business of reconditioning or by any other means salvaging distressed food for human consumption or use.

**History:** Effective March 1, 1996.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09-24

**33-31-03-02. Protection of salvageable and salvaged merchandise.**

All salvageable and salvaged merchandise, while being stored or reconditioned at a salvage processing facility or during transportation, must be protected from contamination. All salvageable merchandise must be properly sorted and segregated from nonsalvageable food to prevent further contamination of the food to be reconditioned for sale or distribution.

**History:** Effective March 1, 1996.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09-24

**33-31-03-03. Reconditioning.**

1. All metal cans of food offered for sale or distribution must be essentially free from rust or pitting and dents, especially at rim, end double seams, or side seams. Leakers, springers, flippers, and swells must be deemed unfit for sale or distribution. Containers, including metal and glass containers with press caps, screw caps, pull rings, or other types of openings which have been in contact with water, liquid foam, or other deleterious substances, as a result of firefighting efforts, flood, sewer backups, or similar mishaps, must be deemed unfit for sale or distribution.
2. All metal containers of food, other than those mentioned in subsection 1, whose integrity has not been compromised and whose integrity would not be compromised by the reconditioning, and which have been in contact with water, liquid foam, or other deleterious substance as a result of flood, sewer backup, or other reasons, after thorough cleaning, must be subjected to sanitizing rinse of a concentration of one hundred ppm available chlorine for a minimum period of one minute, or must be sanitized by another method approved by the department. They must subsequently be treated to inhibit rust formation.

**History:** Effective March 1, 1996.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09-24

**33-31-03-04. Labeling requirements.**

1. Any container of food with the label of mandatory information missing which cannot be identified and relabeled correctly may not be sold. When original labels are missing or illegible, relabeling or overlabeling is required.
2. All salvaged food, except as described in subsection 5, must be identified to indicate that the food has been salvaged by clearly marking the term "salvaged food" on all invoices, bills of lading, shipping invoices, receipts, and inventory records.

3. A person selling salvaged food at retail, except as described in subsection 5, shall notify the consumer that the food is salvaged either by labeling each retail package or container "salvaged" or "reconditioned" or posting a conspicuous placard at the retail display location stating "salvaged food" or "reconditioned food". Placards must be readable, using letters of not less than one and one-half-inch [3.81-centimeter] type. Placards must also state, "This item has been reconditioned and has been determined wholesome for human consumption under applicable state requirements by (name of food seller)".
4. All salvaged food in containers must be provided with labels that comply with the requirements contained in North Dakota Century Code chapter 19-02. If original labels are removed from containers that are to be resold or redistributed, the replacement labels must show as the distributor the name and address of the salvage food processor and the date of reconditioning for sale or distribution.
5. Subsections 2 and 3 do not apply to food products damaged in normal course of handling and transportation, where food is intact in its original container and has not been subject to fire, chemical spills, temperature abuse in perishable food products, in contact with water, or other similar risk of contamination.

**History:** Effective March 1, 1996.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09-24

**33-31-03-05. Recordkeeping requirements.** A written record or receipt of distressed, salvageable, and salvaged food must be kept by the salvage food processor and distributor for inspection by the department during business hours. The records must include the name of the product, the source of the distressed food, the date received, the type of damage, the salvage process conducted, and the purchaser of the salvaged food. These records must be kept on the premises of the salvage food processor and distributor for a period of one year following the completion of transactions involving the food.

**History:** Effective March 1, 1996.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09-24

**33-31-03-06. Salvage processing facilities and distributors outside the jurisdiction of the department.** Salvaged merchandise from salvage processing facilities and distributors outside the jurisdiction of the department may be sold or distributed with the state if such facilities and distributors conform to the provisions of this code or substantially equivalent provisions. To determine the extent of compliance with such provisions, the department may accept reports from

responsible authorities in other jurisdictions where such facilities and distributors operations are located.

**History:** Effective March 1, 1996.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09-24

**33-31-03-07. Salvaged food operator license fee.** Before any salvaged food operator engages in the distribution or selling of distressed or salvaged food, that operator must be licensed by the department. Licenses expire on December thirty-first following the date of issuance. The annual license fee for a salvaged food distributor is ~~eighty~~ one hundred dollars.

**History:** Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09-24

## ARTICLE 33-33

### RULES INITIATED BY THE INSPECTION DIVISION

#### Chapter

33-33-01	Mobile Home Park Rules
33-33-02	Trailer Park and Campground Rules
33-33-03	Food Vending Rules
33-33-04	Food Code
33-33-05	Smoke Detector Rules
33-33-06	Bed and Breakfast Facilities
33-33-07	Beverage License Fees
33-33-08	Food Establishment License Fees
33-33-09	Assisted Living Facilities

### CHAPTER 33-33-01 MOBILE HOME PARK RULES

#### Section

33-33-01-01	Definitions
33-33-01-02	Application for License
33-33-01-03	Fire and Life Safety Requirements
33-33-01-04	Facilities Provided
33-33-01-05	Noxious Plant and Animal Control
33-33-01-06	Maintenance of Service Buildings
33-33-01-07	License Fees

#### **33-33-01-01. Definitions.** As used in this chapter:

1. "Accessory building or structure" means a building or structure that is an addition to a mobile home or that supplements the facilities provided in a mobile home. It is not a self-contained, separate, habitable building or structure.
2. "Department" means the state department of health.
3. "Service building" means a structure housing shower, bath, toilet, lavatory, and such other facilities as may be required by the North Dakota state plumbing code.

**History:** Effective August 1, 1988; amended effective October 1, 1990; July 1, 2004.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-02

**33-33-01-02. Application for license.** A complete scaled plan and list of specifications for new construction or for altering or enlarging of an existing mobile home park must be submitted to the department for approval. Mobile home parks which are enlarged shall meet all rules and regulations in effect at the time of

enlarging for the portion of the park which is enlarged. The plans or specifications must contain the following:

1. A legal description of the property and a description of the site location with regard to highways, streets, and landmarks.
2. Name and address of developer.
3. Name and address of architect, engineer, or designer.
4. The area and dimensions of the site.
5. The number, location, and dimensions of all mobile home lots and detail of each typical lot for each mobile home.
6. The location and width of roadways, automobile parking facilities, and walkways, including whether they are paved, blacktopped, graveled, etc.
7. The location and details of any service buildings or other proposed structures.
8. The location and details of lighting and electrical systems.
9. The location and specifications of the water supply, sewer, and refuse disposal facilities, including approved soil testing results and details of wells, pumping stations, and service riser pipes.

**History:** Effective August 1, 1988; amended effective October 1, 1990.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-02, 23-10-03

### **33-33-01-03. Fire and life safety requirements.**

1. No portion of a mobile home, excluding the tongue, shall be located closer than ten feet [3 meters] side to side, eight feet [2.4 meters] end to side, or six feet [1.8 meters] end to end horizontally from any other mobile home, accessory building, or structure unless the exposed composite walls and roof of either structure are without openings and constructed of materials that will provide a one-hour fire-resistant rating or the structures are separated by a one-hour fire-rated barrier.
2. Accessory buildings or structures shall be permitted to be located immediately adjacent to a lot line when constructed of materials that do not support combustion and provided that such buildings or structures are not less than three feet [.9 meter] from an accessory building or structure on an adjacent lot. An accessory building or structure constructed of combustible materials shall be located no closer than five feet [1.53 meters] from the bordering lot line.

3. No mobile home, attachment, accessory building, or structure may be located so as to create hazard to the mobile home or park occupants or restrict emergency vehicles and personnel from performing necessary services.
4. Streets must be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street. In all cases, streets must meet the following minimum requirements:
  - a. Two-way streets with parking on both sides 34 feet [10.36 meters]
  - b. Two-way streets with parking on one side only 27 feet [8.23 meters]
  - c. Two-way streets without parking 24 feet [7.32 meters]
  - d. One-way streets with parking on both sides 27 feet [8.23 meters]
  - e. One-way streets with parking on one side only 18 feet [5.49 meters]
  - f. One-way streets without parking 14 feet [4.27 meters]
5. The street system must give an unobstructed access to the public street, highway, or access road.

**History:** Effective August 1, 1988; amended effective October 1, 1990; June 1, 1991; July 1, 2004.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-02, 23-10-07

**33-33-01-04. Facilities provided.**

1. Conversion of a mobile home park, trailer park, or campground from one type to another must be approved by the department.
2. Streets and walkways must be lighted to provide a minimum average maintained illumination of four-tenths foot-candles [4.31 lux], with a uniformity ratio of no greater than six to one.
3. Each lot in a mobile home park must be provided with an approved electrical service outlet.
4. Each lot in a mobile home park must be provided with an approved plumbing system.
5. A certification from the electrical and plumbing installer, stating all installations were made in accordance with state codes, shall be required before issuance of the mobile home license.

6. No accessory building or structure may obstruct the exit ways of the mobile home.

**History:** Effective August 1, 1988; amended effective October 1, 1990; July 1, 2004.

**General Authority:** NDCC 23-01-03(2), 23-10-02

**Law Implemented:** NDCC 23-10-02, 23-10-07

**33-33-01-05. Noxious plant and animal control.**

1. The grounds, buildings, and structures of a mobile home park must be maintained free of harborage for insects, rodents, and other vermin. Extermination methods and other measures to control insects and rodents must conform with the requirements of the department.
2. All areas must be maintained free of accumulations of debris. The growth of brush, weeds, and grass must be controlled to prevent harborage or breeding places for noxious insects and vermin. Mobile home parks must be so maintained as to prevent the growth of noxious weeds considered detrimental to health.
3. Storage areas must be maintained so as to prevent rodent harborage. Lumber, firewood, pipe, and other building materials must be stored neatly at least one foot [.3 meter] above the ground.
4. Any skirting of mobile homes must be of a type and construction which will not provide harborage. Where mobile homes are skirted, an access opening must be provided near service connections.

**History:** Effective August 1, 1988; amended effective October 1, 1990.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-02, 23-10-07

**33-33-01-06. Maintenance of service buildings.** Service buildings, sinks, toilets, and other equipment must be kept in a clean and sanitary condition and in good repair at all times.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-02, 23-10-07

**33-33-01-07. License fees.** The department shall charge the following fees for licenses to operate mobile home parks in this state:

1. For a mobile home park containing at least three but not more than ten lots, ~~seventy-five~~ ninety dollars.
2. For a mobile home park containing at least eleven but not more than twenty-five lots, one hundred ~~ten~~ thirty-five dollars.



3. For a mobile home park containing at least twenty-six but not more than fifty lots, one hundred ~~forty-five~~ seventy-five dollars.
4. For a mobile home park containing ~~more than fifty~~ at least fifty-one but not more than one hundred lots, ~~one two hundred eighty~~ two hundred dollars.
5. For a mobile home park containing at least one hundred one but not more than one hundred fifty lots, two hundred seventy dollars.
6. For a mobile home park containing at least one hundred fifty-one but not more than two hundred lots, three hundred twenty dollars.
7. For a mobile home park containing at least two hundred one but not more than two hundred fifty lots, three hundred seventy dollars.
8. For a mobile home park containing more than two hundred fifty lots, four hundred twenty dollars.

The department shall waive the license fee for any mobile home park owned by the state, a municipality, or a nonprofit organization.

**History:** Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-10-02, 23-10-07

**CHAPTER 33-33-02**  
**TRAILER PARK AND CAMPGROUND RULES**

Section	
33-33-02-01	Definitions
33-33-02-02	Application for License
33-33-02-03	Spacing Requirements
33-33-02-04	Facilities Provided
33-33-02-05	Noxious Plant and Animal Control
33-33-02-06	Maintenance of Service Buildings
33-33-02-07	License Fees

**33-33-02-01. Definitions.** As used in this chapter:

1. "Recreational vehicle" means a travel trailer.
2. "Service building" means a structure housing shower, bath, toilet, lavatory, and such other facilities as may be required by the North Dakota state plumbing code.
3. "Tent" means a collapsible shelter of canvas or other fabric stretched and sustained by poles and used for camping outdoors.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-01

**33-33-02-02. Application for license.** A complete scaled plan and list of specifications for new construction or for altering or enlarging of an existing trailer park or campground must be submitted to the department for approval. The application must contain the following:

1. A legal description of property and a description of the site location with regard to highways, streets, and landmarks.
2. Name and address of developer.
3. Name and address of architect, engineer, or designer.
4. The area and dimensions of the site.
5. The number, location, and dimensions of all trailer or campground lots and detail of each typical lot for each trailer or tent.
6. The location and width of roadways, automobile parking facilities, and walkways, including whether they are paved, blacktopped, graveled, etc.

7. The location and details of service buildings and any other proposed structures.
8. The location and details of lighting and electrical systems.
9. The location and specifications of the water supply, sewer, and refuse disposal facilities; including approved soil testing results and details of wells, pumping stations, and service riser pipes.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-03

**33-33-02-03. Spacing requirements.**

1. No tent, recreational vehicle, or other attachment may be located within ten feet [3.05 meters] of any other tent, recreational vehicle, or part thereof. No recreational vehicle or tent in a trailer park or campground may be located as to create a hazard to the recreational vehicle or tent or restrict emergency vehicles and personnel from performing necessary services.
2. Streets must be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street. In all cases, streets must meet the following minimum requirements:
 

a. Two-way streets with parking on both sides	34 feet	[10.36 meters]
b. Two-way streets with parking on one side only	27 feet	[8.23 meters]
c. Two-way streets without parking	24 feet	[7.32 meters]
d. One-way streets with parking on both sides	27 feet	[8.23 meters]
e. One-way streets with parking on one side only	18 feet	[5.49 meters]
f. One-way streets without parking	14 feet	[4.27 meters]
3. The street system must give an unobstructed access to the public street, highway, or access road.
4. Tenting areas must be designated for tents only.

**History:** Effective August 1, 1988; amended effective July 1, 2004.

**General Authority:** NDCC 23-10-02, 23-01-03(3)

**Law Implemented:** NDCC 23-10-07

#### **33-33-02-04. Facilities provided.**

1. Conversion of a mobile home park, trailer park, or campground from one type to another must be approved by the department.
2. Streets must be lighted to provide a minimum of one-tenth foot-candle [1.09 lux] throughout the street system. Potentially hazardous locations, such as major street intersections and steps or stepped ramps, must be individually illuminated with a minimum of three-tenths foot-candles [3.23 lux].
3. Where provided, electrical service outlets must be adequate and approved.
4. Where provided, individual sewer connections must be adequate and approved. Recreational vehicle waste disposal stations, watering stations, and service building facilities must be provided and constructed in accordance with the North Dakota state plumbing code.
5. A certification from the electrical and plumbing installer, stating all installations were made in accordance with state codes, is required before issuance of the trailer park or campground license.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-07

#### **33-33-02-05. Noxious plant and animal control.**

1. The grounds, buildings, and structures of a trailer park or campground must be maintained free of harborage for insects, rodents, and other vermin. Extermination methods and other measures to control insects and rodents must conform with the requirements of the department.
2. All areas must be maintained free of accumulations of debris; the growth of brush, weeds, and grass must be controlled to prevent harborage or breeding places for noxious insects and vermin. Trailer parks and campgrounds must be so maintained as to prevent the growth of noxious weeds considered detrimental to health.
3. Storage areas must be maintained so as to prevent rodent harborage; lumber, firewood, pipe, and other building materials must be stored neatly at least one foot [.3 meter] above the ground.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-07

**33-33-02-06. Maintenance of service buildings.**

1. Service buildings, sinks, toilets, and other equipment must be kept in a clean and sanitary condition and in good repair at all times.
2. Toilet tissue must be provided and conveniently located in each toilet room.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-10-02

**Law Implemented:** NDCC 23-10-07

**33-33-02-07. License fees.** The department shall charge the following fees for licenses to operate trailer parks or campgrounds in this state:

1. For a trailer park or campground containing at least three but not more than ten lots, ~~seventy-five~~ ninety dollars.
2. For a trailer park or campground containing at least eleven but not more than twenty-five lots, one hundred ~~ten~~ thirty-five dollars.
3. For a trailer park or campground containing at least twenty-six but not more than fifty lots, one hundred ~~forty-five~~ seventy-five dollars.
4. For a trailer park or campground containing ~~more than fifty~~ at least fifty-one but not more than one hundred lots, ~~one two hundred eighty~~ twenty dollars.
5. For a trailer park or campground containing at least one hundred one but not more than one hundred fifty lots, two hundred seventy dollars.
6. For a trailer park or campground containing at least one hundred fifty-one but not more than two hundred lots, three hundred twenty dollars.
7. For a trailer park or campground containing at least two hundred one but not more than two hundred fifty lots, three hundred seventy dollars.
8. For a trailer park or campground containing more than two hundred fifty lots, four hundred twenty dollars.

The department shall waive the license fee for any trailer park or campground owned by the state, a municipality, or a nonprofit organization.

**History:** Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-10-07

**CHAPTER 33-33-03  
FOOD VENDING RULES**

Section	
33-33-03-01	Definitions
33-33-03-02	License Issuance, Suspension, Revocation, and Reinstatement
33-33-03-03	Sale, Examination, Condemnation of Adulterated or Misbranded Food
33-33-03-04	Inspection of Machines and Commissaries
33-33-03-05	Sanitation Requirements
33-33-03-06	Disease Control
33-33-03-07	Procedure When Infection Is Suspected
33-33-03-08	Commissaries Outside North Dakota

**33-33-03-01. Definitions.** The following definitions shall apply in the interpretation and the enforcement of this chapter.

1. "Adulterated" means the condition of a food (a) if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; (b) if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by rule, or in excess of such tolerance if one has been established; (c) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; (d) if it has been processed, prepared, packed, or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (e) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.
2. "Approved" means acceptable to the state department of health based on a determination as to conformance with appropriate standards and good public health practice.
3. "Closed" means fitted together snugly leaving no openings large enough to permit the entrance of vermin.
4. "Commissary" means catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, and directly from which vending machines are serviced.
5. "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds, and sanitizing solutions which may contact it.
6. "Department" means the state department of health.

7. "Easily cleanable" means readily accessible and of such material and finish, and so fabricated that residue may be completely removed by normal cleaning methods.
8. "Employee" means any operator or any person employed by the operator who handles any food to be dispensed through vending machines, or who comes into contact with food-contact surfaces of containers, equipment, utensils, or packaging materials, used in connection with vending machine operations, or who otherwise services or maintains one or more such machines.
9. "Food" means any raw, cooked, processed edible substance, or combination of substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
10. "Food-contact surfaces" means those surfaces of equipment and utensils with which food normally comes in direct contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.
11. "Machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated.
12. "Misbranded" means the presence of any written, printed, or graphic matter, upon or accompanying food or containers of food, including signs or placards displayed in relation to such products, which is false or misleading, or which violates any applicable state or local labeling requirements.
13. "Operator" means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines, or provides space for vending machines.
14. "Perishable food" means any food of such type or in such condition as may spoil.
15. "Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity.
16. "Potentially hazardous food" means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms.
17. "Safe temperature" as applied to potentially hazardous food, means temperatures of forty-five degrees Fahrenheit [7.22 degrees Celsius] or below, or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.

18. "Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in destroying micro-organisms, including pathogens.
19. "Single-service articles" means cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles; straws, place mats, napkins, doilies, wrapping materials; and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic synthetic, or readily destructible materials, and which are intended for one usage only, then to be discarded.
20. "Vending machine" means any self-service device which upon insertion of a coin, coins, or tokens dispenses food without the necessity of replenishing the device between each vending operation. The term also includes all freezers, refrigerators, and ovens used to store or prepare prepackaged, preserved foods regardless of the manner in which the food is taken from the freezer, refrigerator, or oven. Excluded from the definition of food vending machines shall be bottled or canned soft drink dispensers; prepackaged ice dispensers and freezers; prepackaged candy, cookie, cracker, or similar nonpotentially hazardous food dispensers; and gumball, nut, and panned candy dispensers.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

**33-33-03-02. License issuance, suspension, revocation, and reinstatement.**

1. It shall be unlawful for any person to engage in the operation of one or more vending machines in North Dakota who does not possess a currently valid vending license from the department. Only persons who comply with the provisions of this chapter shall be entitled to receive such a license. The annual license fee for operating a vending machine is ~~twenty-five~~ thirty dollars.
2. Any person desiring to operate one or more vending machines in North Dakota shall make application in writing to the department on forms provided by the department. The applicant shall provide the following information:
  - a. The applicant's full name, residence, and post-office address.
  - b. The name and location of the commissary or commissaries where the vending machines are to be located and the name and location of the company or companies servicing the vending machines.



- c. The identity of the products to be dispensed through vending machines.
  - d. The signature of the applicant or applicants.
- 3. Upon receipt of the application, the department shall issue a license to the applicant. The license shall not be transferable. The operator's license shall be displayed and be readily visible in the immediate area of the vending machines. In order to retain an operator's license, the operator shall comply with the requirements of these regulations.
- 4. After an opportunity for a hearing, and following the procedures provided in section 33-33-03-04, an operator's license may be suspended temporarily by the department upon violation by the licenseholder of any of the provisions of this chapter or may be revoked upon serious or repeated violation of such section, or for interference with the department's performance of its duties.
- 5. Notwithstanding any other provisions of this chapter, whenever the department finds unsanitary or other conditions involving the operation of any vending machine or commissary which, in the judgment of the department, constitutes a substantial hazard to the public health, it may, without notice or hearing, issue a written order to the operator citing the existence of such condition and specifying corrective action to be taken and, if deemed necessary, requiring immediate discontinuance of operation. Such order shall be effective immediately and shall apply only to the vending machine, commissary, or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the department, shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and upon receipt of a written request from the operator, the department shall make a reinspection to determine whether operations may be resumed.
- 6. After any hearing held under the provisions of this chapter, the department shall sustain, modify, or rescind any notice or order considered in the hearing.
- 7. Any operator whose license has been suspended may at any time make application for the reinstatement of the license. Within ten days after the receipt of a written application, accompanied by, or including, a statement signed by the operator to the effect that in the operator's opinion the violated term or terms of this chapter have been complied with, the department shall make a reinspection. If the applicant is again complying with the terms of this chapter, the license shall be reinstated.

**History:** Effective August 1, 1988; amended effective January 1, 2006; April 1, 2008; January 1, 2014.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

**33-33-03-03. Sale, examination, condemnation of adulterated or misbranded food.** It shall be unlawful for any person within North Dakota to sell, offer, or expose for sale, through vending machines, or to have in possession with intent to sell therefrom any food which is adulterated or misbranded. Samples of food may be taken and examined by the department as often as may be necessary to determine freedom from adulteration or misbranding. The department may, on written notice to the operator, impound and forbid the sale of any food which is adulterated or misbranded, or which the department has probable cause to believe to be adulterated or misbranded. After the operator has been given an opportunity for a hearing, the department may cause to be removed or destroyed any food which is adulterated or misbranded; provided, that in the case of misbranding which can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the department.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

**33-33-03-04. Inspection of machines and commissaries.**

1. The department may inspect the servicing, maintenance, and operation of vending machines and commissaries as often as needed to determine compliance with this chapter. The department, after proper identification, shall be permitted to enter at any reasonable time upon any private or public property within North Dakota where vending machines or commissaries are operated, or from which such machines are otherwise serviced, for the purpose of determining compliance with the provisions of these regulations. The operator shall make provision for the department to have access, either in company with an employee or otherwise, to the interior of all vending machines operated by the operator.
2. Whenever the department discovers a violation of any provision of this chapter, it shall notify the operator concerned either by the inspection report form or by other written notice. Such form or notice shall (1) describe the condition found and state which section of this chapter is violated by such condition; (2) provide a specific and reasonable period of time for the correction of the condition; and (3) state that an opportunity for a hearing on inspection findings will be provided, if a written request for such hearing is filed with the department within ten days of receipt of the notice. The department may also advise the operator in writing that unless the violations are corrected within the specified period of time, any license issued under the provisions of this chapter may be suspended or revoked, in accordance with provisions of section 33-33-03-02, or court action may be initiated.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

### **33-33-03-05. Sanitation requirements.**

#### **1. Food, consumer containers, equipment maintenance, and operations.**

- a. Food intended for sale through vending machines and condiments available at vending machine locations shall be obtained from sources complying with the regulations of North Dakota. Such food shall be wholesome, free from spoilage, and shall be processed, prepared, handled, and stored in such a manner as to be protected against contamination and adulteration. All food-contact surfaces of containers and equipment shall be protected from contamination. If condiments are provided for service in conjunction with food dispensed by a vending machine, they shall be packaged in individual portions in single-service containers or shall be dispensed from approved sanitary dispensers which are washed, sanitized, and filled at the commissary. Relish bowls and similar non-self-closing condiment containers shall not be used. Potentially hazardous food shall be held at safe temperatures except during necessary periods of preparation.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
  - (1) All food offered for sale through vending machines shall be manufactured, processed, and prepared in commissaries or establishments which comply with all applicable state laws and regulations.
  - (2) All food offered for sale through vending machines shall be wholesome.
  - (3) All food shall be stored or packaged in clean protective containers, and shall be handled, transported, and vended in a sanitary manner. Condiments provided for service in conjunction with food dispensed by a vending machine shall be packaged in individual portions in single-service containers or shall be dispensed from approved sanitary dispensers which are washed, sanitized, and filled at the commissary. Fresh fruits which may be eaten raw without peeling may be dispensed unpackaged but must be thoroughly washed in potable water before being placed in the vending machine. Storage of cartoned, bottled, canned, or packaged food by placing or submerging it in liquid is prohibited. Submerging such containers of food in ice is prohibited.
  - (4) Potentially hazardous food offered for sale through vending machines shall be handed or dispensed to the consumer

in the individual original container or wrapper into which it was placed at the commissary or at the manufacturer's or processor's plant, or such products shall be dispensed into single-service containers from containers which were filled at the commissary or at the manufacturer's or processor's plant.

- (5) In those vending machines which dispense potentially hazardous food from bulk, the bulk supplies of such food shall be transferred only to bulk vending machine containers and appurtenances which have been cleaned and sanitized.
- (6) Potentially hazardous food within the vending machine shall be maintained at a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or below, or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above, whichever is applicable; provided, that exceptions may be made for (a) the actual time required to load or otherwise service the machine and for a maximum recovery period of thirty minutes, following completion of loading or servicing operation; and (b) in the case of hot food vending machines, a maximum of one hundred twenty minutes to heat food through the forty-five degrees Fahrenheit [7.22 degrees Celsius] to one hundred forty degrees Fahrenheit [60 degrees Celsius] temperature zone. In hot food vending machines which are not equipped with refrigerated storage, there shall be no time delay to preclude heat from being applied to potentially hazardous food immediately after it is loaded or placed in the machine. Potentially hazardous food once heated to, or held at, a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above, shall be maintained at such temperature until served or discarded.

Vending machines dispensing potentially hazardous food shall be provided with adequate refrigerating or heating units, or both, and thermostatic controls which ensure the maintenance of applicable temperatures at all times. Such vending machines shall also have controls which prevent the machine from vending potentially hazardous food until serviced by the operator, in the event of power failure or other condition which results in noncompliance with temperature requirements in the food storage compartment.

Hot food vending machines designed to heat food through the forty-five degrees Fahrenheit [7.22 degrees Celsius] to one hundred forty degrees Fahrenheit [60 degrees Celsius] temperature range, shall also be equipped with automatic controls which render the machine incapable of vending potentially hazardous food until serviced by the operator in

the event that heating through this temperature range is not accomplished in one hundred twenty minutes or less.

Potentially hazardous food which has failed to conform to the time-temperature requirements of this paragraph shall be removed from the vending machine, and be denatured or otherwise rendered unusable for human consumption.

Vending machines dispensing potentially hazardous food shall be provided with one or more thermometers which, to an accuracy of minus two degrees Fahrenheit [minus 18.89 degrees Celsius], indicates the air temperature of the warmest part of the refrigerated food storage compartment, or the coldest part of the heated food storage compartment, whichever is applicable.

- (7) Milk and fluid milk products offered for sale through vending machines shall be pasteurized and shall be dispensed only in individual, original containers or from bulk containers into which such product was placed at the milk plant; provided, that such products may be reconstituted automatically within the vending machine when (a) the powder or concentrate is made from a pasteurized milk or milk product and is from an approved source; (b) the mixing chambers or bowls and any food-contact surface downstream from such mixing units are maintained at safe temperatures; and (c) the product is reconstituted for immediate dispensing in individual unit servings.
- (8) Milk and fluid milk products used as an ingredient in hot liquid beverages dispensed from vending machines may be transferred to a multiuse machine canister at the machine location; provided, that (a) the location offers adequate protection against dust, insects, and other contamination; (b) the milk or fluid milk product is transferred from a dairy-filled container of not to exceed one-half gallon [1.89 liter] capacity; (c) the entire contents of such dairy-filled container are used in the transfer; (d) unused portions removed from the machine are discarded to waste; and (e) the milk or fluid milk product is poured only into an empty canister which has been effectively cleaned and sanitized at the commissary; provided further, that milk or fluid milk products shall not be used as an ingredient under the terms of this paragraph unless the temperature of the hot beverage at the point of mixing with the milk product is one hundred sixty degrees Fahrenheit [71.11 degrees Celsius] or higher.

Vending machine canisters and appurtenances used for the transfer of such milk products shall be effectively cleaned

and sanitized at approved, fixed facilities at the commissary by methods approved by the department. After sanitization, the canister and appurtenances shall be fully wrapped in a single-service bag or cover which shall not be opened until the canister unit is installed in the refrigerated compartment of the vending machine. Canisters and appurtenances shall be so designed and constructed that the handling of contact surfaces at the machine location is unnecessary; and, such surfaces shall not be handled during canister installation, tube insertion, or product transfer.

- (9) All parts of any bulk milk vending machine which come into direct contact with the milk or milk product shall be effectively cleaned and sanitized at the milk plant; provided, that single-service dispensing tubes which receive sanitizing treatment at the fabricating plant and which are individually packaged in such manner as to preclude contamination, may be exempted from this provision. The can or other bulk milk container shall be filled only at the milk plant and shall be sealed in such manner as to make it impractical to withdraw any part of its contents or to introduce any substance without breaking the seal or seals. The delivery tube and any milk-contact parts of the dispensing device shall be attached at the milk plant, and shall be protected by a moistureproof covering, or housed in a compartment with a moisture-tight closure which shall not be removed until after the container is placed in the refrigerated compartment of the vending machine.
- (10) With the exception of food-contact surfaces of bulk milk vending machines for which separate provisions for cleaning and sanitizing are specified in paragraph 9, all multiuse containers or parts of vending machines which come into direct contact with potentially hazardous food shall be removed from the machine daily and shall be thoroughly cleaned and effectively sanitized at the commissary or other approved facility; provided, that the requirement for daily cleaning and sanitizing may be waived for those food-contact surfaces which are maintained at all times at a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or below, or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above, whichever is applicable, and an approved cleaning frequency is followed. Such parts shall, after sanitizing, be protected from contamination.
- (11) All parts of vending machines which come into direct contact with other than potentially hazardous food shall be thoroughly cleaned by approved methods. The frequency of such cleaning shall be established by the department based

upon the type of product being dispensed. A record of such cleaning operations shall be maintained by the operator in each machine or shall be made available at the time of inspection and shall be current for at least the past thirty days.

- (12) All single-service articles shall be purchased in sanitary cartons or packages which protect the articles from contamination, shall be stored in a clean, dry place until used, and shall be handled in a sanitary manner. Such articles shall be stored in the original carton or package in which they were placed at the point of manufacture until introduced into the magazine or dispenser of the vending machine. Single-service articles stored within the vending machine shall be protected from manual contact, dust, insects, rodents, and other contamination.

## 2. **Machine location.**

- a. The machine location shall be such as to minimize the potential for contamination of the food, shall be well-lighted, easily cleanable, and shall be kept clean. Conveniently located handwashing facilities shall be available for use by employees servicing or loading bulk food machines.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
  - (1) Each vending machine shall be located in a room, area, or space which can be maintained in a clean condition and which is protected from overhead leakage or condensation from water, waste, or sewer piping. The immediate area in which the machine is located shall be well-lighted. Each vending machine shall be so located that the space around and under the machine can be easily cleaned and maintained, and so that insect and rodent harborage is not created.
  - (2) The floor area where vending machines are located shall be reasonably smooth, of cleanable construction, and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition.
  - (3) Adequate handwashing facilities, including hot and cold or tempered running water, soap, and individual towels, shall be convenient to the machine location and shall be available for use by employees servicing or loading bulk food machines.

### 3. Exterior construction and maintenance.

- a. The exterior construction of the vending machine shall be such as to facilitate cleaning and to minimize the entrance of insects and rodents, and the exterior of the machine shall be kept clean. Service connections to machines vending potentially hazardous food or food in bulk shall be such as to protect against unintentional or accidental interruption of service to the machine.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
  - (1) The vending machine shall be of sturdy construction and the exterior shall be so designed, fabricated, finished, and maintained so as to facilitate its being kept clean, and to minimize the entrance of insects and rodents. The exterior of the machine shall be kept clean.
  - (2) Door and panel access openings to the food and container storage spaces of the machine shall be tight-fitting, and if necessary, gasketed, so as to prevent the entrance of dust, moisture, insects, and rodents.
  - (3) All ventilation louvers or openings into vending machines shall be effectively screened. Screening material for openings into food and container storage spaces of the machine shall be not less than sixteen mesh to the inch [2.54 centimeters] or equivalent. Screening material for openings into condenser units which are separated from food and container storage spaces shall be not less than eight mesh to the inch [2.54 centimeters] or equivalent.
  - (4) In all vending machines in which the condenser unit is an integral part of the machine, such unit when located below the food and container storage space shall be separated from such space by a dustproof barrier, and when located above, shall be sealed from such space.
  - (5) Unless the vending machine is sealed to the floor or counter so as to prevent seepage underneath, or can be manually moved with ease, one or more of the following provisions shall be utilized to facilitate cleaning operations: (a) The machine shall be mounted on legs six inches [15.24 centimeters] or more in height; provided, that countertop machines may use four-inch [10.16-centimeter] legs; or (b) the machine shall be mounted on casters or rollers; or (c) the machine shall be mounted on gliders which permit it to be easily moved.



- (6) All service connections through an exterior wall of the machine, including water, gas, electrical, and refrigeration connections, shall be grommeted or closed to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food or food in bulk shall be such as to discourage their unauthorized or unintentional disconnection.

#### 4. Interior construction and maintenance.

- a. All interior surfaces and component parts of the vending machine shall be so designed and constructed as to permit easy cleaning, and shall be kept clean. All food-contact surfaces of the machine shall be of smooth, nontoxic, corrosion-resistant, and relatively nonabsorbent material, and shall be capable of withstanding repeated cleaning and sanitizing by normal procedures. Such surfaces shall be protected against contamination.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
  - (1) The non-food-contact surfaces of the interior of vending machines shall be so designed and constructed as to permit easy cleaning, and to facilitate maintenance operations. Inaccessible surfaces or areas shall be minimized.
  - (2) All food-contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks, and chipped places. The design of such surfaces shall be such as to preclude routine contact between food and V-type threaded surfaces. All joints and welds in food-contact surfaces shall be smooth; and all internal angles and corners of such surfaces shall be rounded to facilitate cleaning.
  - (3) All food-contact surfaces of vending machines, including containers, pipes, valves, and fittings, shall be constructed of nontoxic, corrosion-resistant, and relatively nonabsorbent materials, and shall be kept clean. In all vending machines in which carbon dioxide is used to propel water, food, or other ingredients, all food-contact surfaces in the system shall be of such material as to preclude the production of toxic substances which might result from interaction between the carbon dioxide and food-contact surfaces. All food-contact surfaces, unless designed for in-place cleaning, shall be accessible for manual cleaning and inspection: (a) without being disassembled; (b) by disassembly without the use of tools; or (c) by easy disassembly with the use of only simple tools such as a screwdriver or an open-end wrench.

In machines of such design that food-contact surfaces are not readily removable, in-place cleaning of such surfaces may be permitted; provided, that (a) they are so arranged that cleaning and sanitizing solutions can be circulated throughout the fixed system; (b) such solutions will contact all food-contact surfaces; (c) the system is self-draining or otherwise completely evacuated; and (d) the procedures utilized result in thorough cleaning of the equipment.

- (4) The openings into all nonpressurized containers used for the storage of vendable food, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover wherever the collection of condensation, moisture, or splash is possible. Concave covers or cover areas are prohibited. Any port opening through the cover shall be flanged upward at least three-sixteenths inch [4.76 millimeters], and shall be provided with an overlapping cover flanged downward. Condensation, drip, or dust deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the food container, unless a watertight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of a material which is nontoxic, relatively stable, and relatively nonabsorbent, and shall have a smooth surface. All gasket retaining grooves shall be easily cleanable.
- (5) The delivery tube or chute and orifice of all bulk food and bulk beverage vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall be such as to divert condensation or other moisture from the normal filling position of the container receiving the food or beverage. The vending stage of such machines shall be provided with a tight-fitting, self-closing door or cover which is kept shut, except when food is being removed.
- (6) The food storage compartment within vending machines dispensing packaged liquid food shall be so constructed as to be self-draining, or shall be provided with a drain outlet which permits complete draining of the compartment. All such drains shall be easily cleanable.
- (7) Opening devices which come into contact with the food or the food-contact surface of the containers shall be constructed of smooth, nontoxic, corrosion-resistant, and relatively

nonabsorbent materials. Unless the opening device is of a single-service type, it shall be readily removable for cleaning, and shall be kept clean. Parts of multiuse opening devices which come into contact with the food or food-contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents, and other contamination; and such parts shall be readily removable for cleaning.

**5. Water supply.**

- a. Water used in vending machines shall be from an approved source, and shall be of a safe and sanitary quality. Vending machines shall be so installed and operated as to prevent the production of toxic substances in the water.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
  - (1) All water used in vending machines shall be of a safe and sanitary quality and from an approved source. Water used as a food ingredient shall be piped to the vending machine under pressure or brought to the vending machine in portable containers or urns which have been filled in a sanitary manner directly from an approved water supply outlet at the commissary or other approved location. Ingredient water shall not be transferred from one container to another at the machine location. Containers for the storage of ingredient water or ice, which are not a part of this closed water system, shall be designed and maintained as food-contact surfaces. Water containers or urns shall be cleaned and sanitized at the commissary or other approved facility after each use. Such portable containers shall be continuously protected against contamination from the time of sanitizing until placed in the vending machine. Protection shall be effected which will prevent unauthorized persons from tampering with or refilling the water container. All plumbing connections and fittings shall be installed in accordance with state and local plumbing regulations.
  - (2) If used, water filters or other water-conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.
  - (3) All vending machines which dispense carbonated beverages, and which are connected to a water supply system, shall be equipped with two (or a double) check valves; or an airgap; or a device to vent carbon dioxide to the atmosphere; or other approved device, which will provide positive protection

against the entrance of carbon dioxide or carbonated water into the water supply system.

- (4) Where check valves are used for the protection of the water supply system, a screen of not less than one hundred mesh to the inch [2.54 centimeters] shall be installed in the waterline immediately upstream from the check valves.
- (5) In all vending machines which dispense carbonated beverages and which are connected to a water supply system, the ingredient water-contact surfaces from the check valves or other protective device downstream, including the device itself, shall be of such material as to preclude the production of toxic substances which might result from interaction with carbon dioxide or carbonated water.

**6. Waste disposal.**

- a. All wastes shall be properly disposed of, and pending disposition, shall be kept in suitable containers so as to prevent creating a nuisance.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
  - (1) All trash and other waste material shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness, and shall be disposed of in an approved manner.
  - (2) Self-closing, leakproof, easily cleanable, plainly labeled and designated waste container or containers shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures, and other single-service items. After being emptied, each waste container shall be thoroughly cleaned. Such waste containers shall not be located within the vending machine; provided, that an exception may be made for those machines dispensing only packaged food with crown closures. In case of an exception, the closure receptacle may be located within the machine. Suitable racks or cases shall be provided for multiuse containers or bottles.
  - (3) Containers shall be provided within all machines dispensing liquid food in bulk for the collection of drip, spillage, overflow, or other internal wastes. An automatic shutoff device shall be provided which will place the vending machine out of operation before such container overflows. Containers or surfaces on which such wastes may accumulate shall be

readily removable for cleaning, shall be easily cleanable, and shall be corrosion-resistant. If liquid wastes from drip, spillage, or overflow, which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an airgap.

**7. Delivery of food, equipment, and supplies to machine location.**

- a. Food, food-contact surfaces of containers, equipment, and supplies shall be protected from contamination while in transit to machine location. Potentially hazardous food, while in transit and in storage on location, shall be maintained at safe temperatures.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
  - (1) Food, while in transit to vending machine locations, shall be protected from the elements, dirt, dust, insects, rodents, and other contamination. Similar protection shall be provided for single-service containers, and for the food-contact surfaces of equipment, containers, and devices in transit to machine locations.
  - (2) Potentially hazardous food, prior to being loaded in the delivery vehicle, shall be maintained at a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or below, or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above, whichever is applicable. Such food shall also comply with the applicable temperature requirements while in transit to machine locations.
  - (3) If potentially hazardous food is stored at machine locations, the applicable safe temperature shall be maintained during storage.

**8. Cleanliness of personnel.**

- a. Employees shall maintain a high degree of personal cleanliness and shall conform to hygienic practices while engaged in handling foods, or food-contact surfaces of utensils or equipments.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the requirements of this subdivision are met. Employees shall wash their hands immediately prior to engaging in any vending machine servicing operation which may bring them into contact with food, or with food-contact surfaces of utensils, containers, or equipment. While engaged in such servicing operations, employees shall wear clean outer garments,

shall conform to hygienic practices, and shall not use tobacco in any form.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

**33-33-03-06. Disease control.** No person, while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a commissary or vending operation in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals. No person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, the manager or person in charge shall notify the department immediately.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

**33-33-03-07. Procedure when infection is suspected.** When the department has reasonable cause to suspect the possibility of disease transmission from any employee, the department shall secure a morbidity history of the suspected employee or make such other investigation as may be indicated, and take appropriate action. The department may require any or all of the following:

1. The immediate exclusion of the employee from all commissaries and vending machine operations.
2. The immediate closure of the commissaries and operations concerned until, in the opinion of the department, no further danger of disease outbreak exists.
3. Restriction of the employee's services to some area of work where there would be no danger of transmitting disease.
4. Adequate medical examination of the employee and of the employee's associates, with such laboratory examinations as may be indicated.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

**33-33-03-08. Commissaries outside North Dakota.** Food from commissaries outside of North Dakota may be sold within the state if such

commissaries conform to the provisions of the food-service establishment sanitation regulations of North Dakota, or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the department may accept reports from the responsible authorities in the jurisdictions where the commissary or commissaries are located.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

**CHAPTER 33-33-06  
BED AND BREAKFAST FACILITIES**

Section	
33-33-06-01	Definitions
33-33-06-02	Water Supply
33-33-06-03	Sewage
33-33-06-04	Food Supplies
33-33-06-05	General Food Protection
33-33-06-06	Food Service Equipment and Utensils Materials
33-33-06-07	General Employee Health
33-33-06-08	Lighting and Ventilation
33-33-06-09	Toilet, Handwashing, Laundry, and Bathing Facilities
33-33-06-10	Beds, Linens, and Furniture
33-33-06-11	Insect and Rodent Control
33-33-06-12	General Requirements
33-33-06-13	Swimming Pools and Spas
33-33-06-14	Fire Safety
33-33-06-15	Inspection - Records Kept [Repealed]
33-33-06-16	License - Application [Repealed]
33-33-06-17	Failure to Comply With Provisions of Chapter
33-33-06-18	License Fees

**33-33-06-01. Definitions.**

1. "Approved" means acceptable to the department based on a determination as to conformance with appropriate standards and good public health practice.
2. "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds, and sanitizing solutions which may contact it.
3. "Department" means the state department of health or its designated agent.
4. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.
5. "Employee" means the permit holder, individuals having supervisory or management duties, and any other person working in a bed and breakfast facility.
6. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and similar items other than utensils, used in the operation of a bed and breakfast facility.



7. "Family-style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food not consumed by those persons is not reused or fed to other people if the food is unwrapped.
8. "Food" means any raw, cooked, processed edible substance, or combination of substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
9. "Food-contact surfaces" means those surfaces of equipment and utensils with which food normally comes in direct contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.
10. "Food processing establishment" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food service establishment, retail food store, or commissary operation.
11. "Kitchenware" means all multiuse utensils other than tableware.
12. "Lodging unit" means a room with one or more beds for an unspecified number of persons.
13. "Perishable food" means any food of such type or in such condition as may spoil.
14. "Potentially hazardous food" means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms.
15. "Private home" means a place of residence of an individual or family.
16. "Proprietor" means the person in charge of the bed and breakfast facility whether as owner, lessee, manager, or agent.
17. "Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in destroying micro-organisms, including pathogens.
18. "Single-service articles" means cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, doilies, wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic synthetic, or readily destructible materials, and which are intended for one usage only, then to be discarded.

19. "Tableware" means multiuse eating and drinking utensils.
20. "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

**History:** Effective August 1, 1988; amended effective January 1, 1990; December 1, 1991; April 1, 2012.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-02. Water supply.** The water supply must be adequate, of a safe sanitary quality and from a source approved by the department. The water supply may not contain bacteriological, chemical, or physical impurities which affect, or tend to affect public health, must meet the bacteriological standards of the United States public health service for waters used upon public or interstate common carriers, and is subject to examination by the department. If it is unfit for drinking under these requirements, it either shall be improved to fulfill the standards or the use thereof shall be discontinued.

1. Each private water source shall be sampled and tested for bacteria initially and every twelve-month period thereafter. Seasonal operations shall be sampled during the peak operating season.
2. Each private water source shall be sampled initially for nitrate analysis. Seasonal operations shall be sampled during the peak operating season.
3. Additional bacteriological or chemical tests may be required by the department.
4. Initially each private source shall be inspected for location, source protection, and design standards.
5. No cross connections with unapproved water supplies may exist.
6. Adequate hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and any other areas in which water is required for cleaning.

**History:** Effective August 1, 1988; amended effective January 1, 1990.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-03. Sewage.** All sewage shall be disposed of in a public sewerage system or in a sewage disposal system approved by the department.

1. An initial inspection shall be made of all existing onsite sewage disposal systems by the department. This inspection shall evaluate system adequacy and if no expansion of existing dwelling facilities is occurring,

no expansion of the system may be required as long as the system is not failing or otherwise contaminating surface or ground water.

2. If an expansion of the dwelling facilities occurs, then evaluation of the onsite sewage disposal system shall be completed by the department. If the system is adequate, then no expansion of the system will be required. If the system is not adequate in size, then system expansion shall be required as per local regulations or, the requirements in ND Publication WP-74-1R (Septic Tank and Absorption Field Disposal Systems for the Home). Plans for expansion shall be submitted to the local jurisdiction or, the department, water supply and pollution control division, for review and approval prior to construction.
3. The department may require that the septic tank be opened to check its construction. If the department determines that pumping of the tank is necessary, the department may require this to occur.
4. If the department determines that the onsite system needs repair or a new system is required, then the system shall be repaired or replaced in accordance with local regulations, or ND Publication WP-74-1R (Septic Tank and Absorption Field Disposal Systems for the Home).

**History:** Effective August 1, 1988; amended effective January 1, 1990; April 1, 2012.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-04. Food supplies.** Food must be in sound condition, free from spoilage, filth, or other contamination and must be safe for human consumption. Food shall be obtained from or be equal to food from sources that comply with all laws relating to food and food labeling. Before serving any food to the public, the bed and breakfast facility shall comply with all applicable inspections of food required by law. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law.

**History:** Effective August 1, 1988; amended effective May 1, 1989.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-05. General food protection.**

1. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage or overhead drippage from condensation and chemicals. The temperature of potentially hazardous food must be forty-one degrees Fahrenheit [5 degrees Celsius] or below or one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or

above at all times, except during necessary periods of preparation and serving. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of forty-one degrees Fahrenheit [5 degrees Celsius] or below; or quick-thawed as part of the cooking process. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared, preferably from chilled products, with a minimum of manual contact. Portions of food once served to an individual may not be served again.

2. Refrigeration facilities, hot food storage facilities, and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, and serving.
3. Live pets are not allowed in any room or area in which food is being prepared for guests.

**History:** Effective August 1, 1988; amended effective April 1, 2012.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-06. Food service equipment and utensils materials.** Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion-resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles may not impart odors, color, or taste, nor contribute to the contamination of food.

Multiuse eating and drinking utensils, kitchenware, and tableware used in the facility shall be sanitized after each use or, single-service items may be used.

Acceptable means of dishwashing/sanitization shall be:

1. Manual cleaning and sanitizing utilizing a sink with two or three compartments with approved chemical sanitizer. Utensils shall be air-dried.

2. Mechanical home style dishwasher with a one hundred sixty degrees Fahrenheit [71.1 degrees Celsius] water supply provided by a booster heater or sanitizing cycle.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-07. General employee health.**

1. No employee, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that can cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, may work in a bed and breakfast facility in any capacity in which there is a likelihood of such employee contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.
2. Bed and breakfast employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices. Employees shall thoroughly wash their hands with soap and warm water before preparing or serving food.

**History:** Effective August 1, 1988; amended effective January 1, 1990.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-08. Lighting and ventilation.** Rooms and areas used in conjunction with bed and breakfast facilities shall be lighted and ventilated as needed and shall be effective under actual use conditions. Lighting fixtures and ventilating equipment shall be kept clean and in good repair.

**History:** Effective August 1, 1988; amended effective January 1, 1990.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-09. Toilet, handwashing, laundry, and bathing facilities.**

1. Bed and breakfast facilities shall be provided with approved sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast facilities, shall be kept clean and in good repair.
2. All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels.

3. The temperature of hot water furnished to handwashing sinks (lavatories), showers, and bathtubs may not exceed one hundred twenty degrees Fahrenheit [48.9 degrees Celsius].
4. Clean towels and bath cloths shall be stored and handled in a sanitary manner.

**History:** Effective August 1, 1988; amended effective January 1, 1990.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

### **33-33-06-10. Beds, linens, and furniture.**

1. Furniture, mattresses, curtains, and draperies, etc., shall be kept clean and in good repair.
2. Clean bed linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between guests and as often as necessary.
3. Clean linen shall be stored and handled in a sanitary manner and separate from soiled linen.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-11. Insect and rodent control.** Effective measures intended to minimize the presence of rodents, flies, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents. Openings to the outside shall be protected effectively against the entrance of rodents and insects by tight-fitting, self-closing doors, closed windows, screening, or other means.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

### **33-33-06-12. General requirements.**

1. Pesticides, herbicides, and other substances which may be hazardous if ingested, inhaled, or handled shall be stored in a closet, cabinet, or box not accessible to young children.
2. Household cleaning agents such as bleaches, detergents, and polishes shall be stored out of the reach of young children.
3. Medications shall be stored in a separate cabinet, closet, or box not accessible to young children.

4. Bed and breakfast facilities shall be kept in a clean and sanitary condition.

**History:** Effective August 1, 1988.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-13. Swimming pools and spas.** When swimming pools and spas are provided for use by bed and breakfast facility guests, they must be designed, constructed, and maintained to protect the health and safety of its guests. A colorimetric test kit is required for the monitoring and adjusting of disinfectant levels and pH in swimming pools, spas, or other water recreational facilities. A weekly log of disinfection levels and pH must be maintained by the owner of the facility.

**History:** Effective August 1, 1988; amended effective April 1, 2012.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-14. Fire safety.** Bed and breakfast facilities shall be in compliance with the requirements of the Uniform Building Code and Uniform Fire Code as adopted and enforced by the state fire marshal. The department shall report to the state fire marshal violations of any provision of the code which might constitute a fire hazard in the premises so inspected.

The requirements for fire/life/safety shall include, but not be limited to, the following:

1. Smoke detectors.
  - a. A smoke detection device in good operating condition shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. All smoke detectors shall be inspected and listed by underwriters' laboratories or an equivalent. Smoke detectors shall be installed in accordance with the manufacturer's installation instructions.
  - b. A smoke detector shall be installed in the basement of dwelling units having a stairway which opens from the basement into the dwelling. Such detector shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping area.
  - c. The owner of the facility shall test the battery-operated smoke detectors at least weekly and hard-wired detectors at least monthly and shall maintain written records which detail the date and results of the test.

2. Every sleeping unit shall provide a minimum of fifty square feet [4.65 square meters] of floor area per guest.
3. Every sleeping unit shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools. All escapes or rescue windows from sleeping rooms must have a minimum net clear opening of 5.7 square feet [.52 square meters]. The minimum net clear opening height dimension must be twenty-four inches [60.96 centimeters]. The minimum net clear opening width dimensions must be twenty inches [50.8 centimeters]. Where windows are provided as a means of escape or rescue, they must have a finished sill height not more than forty-four inches [111.76 centimeters] above the floor. No sleeping unit in bed and breakfast facilities may be in attic lofts or in basement rooms with a single major means of escape.
4. A fire extinguisher rated 2A and having a BC rating must be conveniently located and accessible in the bed and breakfast facility. The maximum travel distance to the extinguisher must be no more than seventy-five feet [22.86 meters].
5. Emergency numbers shall be posted on the telephones in the bed and breakfast facility.

**History:** Effective August 1, 1988; amended effective January 1, 1990; April 1, 2012.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-06-15. Inspection - Records kept.** Repealed effective January 1, 1990.

**33-33-06-16. License - Application.** Repealed effective January 1, 1990.

**33-33-06-17. Failure to comply with provisions of chapter.** Any proprietor of any bed and breakfast facility who fails to comply with any of the requirements of this chapter, or chapter 23-09.1 of the North Dakota Century Code, shall be given notice of the violation and of a reasonable time within which to comply with the requirements. The notice shall be in writing and shall be delivered personally by the department or shall be sent to the proprietor by any form of mail requiring a signed receipt and resulting in delivery to the proprietor. If the proprietor of the bed and breakfast facility fails to remedy the violations within the time stated within the notice, the department may refuse to grant a new license, or suspend or revoke the license through an administrative hearing held pursuant to chapter 28-32 of the North Dakota Century Code.

**History:** Effective August 1, 1988; amended effective January 1, 1990.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02



**33-33-06-18. License fees.** The annual license fee paid to the department by proprietors of bed and breakfast facilities is ~~thirty-five~~ fifty dollars. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed on or before February first following the expiration date.

**History:** Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09.1-02

**CHAPTER 33-33-07**  
**BEVERAGE LICENSE FEES**

Section

33-33-07-01

Beverage License Fees

**33-33-07-01. Beverage license fees.** Before any beverage bottler, manufacturer, processor, importer, jobber, or other retailer sells or distributes any nonalcoholic beverage in North Dakota, that beverage must be licensed by the department. The license fees for beverages are as follows:

1. Soda water, ginger ale, root beer, and pop, each brand or class, ~~sixty-five~~ eighty dollars.
2. Concentrated extracts, fountain syrups, and beverage bases, each brand, ~~sixty-five~~ eighty dollars.
3. True fruit juices and imitation or compound fruit beverages, each brand, ~~sixty-five~~ eighty dollars. Mineral and spring water, and potable water sold by a private individual, firm, corporation, or limited liability company for household or culinary purposes, each brand, ~~sixty-five~~ eighty dollars.

**History:** Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**CHAPTER 33-33-08**  
**FOOD ESTABLISHMENT LICENSE FEES**

Section  
33-33-08-01                      Food Establishment License Fees

**33-33-08-01. Food establishment license fees.** The following annual license fees must be paid by the proprietors of food establishments, assisted living facilities, schools, or child care centers:

1. For a restaurant with general food service, ~~ninety~~ one hundred ten dollars plus fifty cents per seat, with a maximum license fee of ~~one~~ two hundred ~~eighty~~ ten dollars.
2. For a limited restaurant, ~~ninety~~ one hundred ten dollars.
3. For a retail food store, retail meat market, or bakery with not more than two thousand five hundred square feet [232.26 square meters], ~~ninety~~ one hundred ten dollars.
4. For a retail food store, retail meat market, or bakery with two thousand five hundred to five thousand square feet [232.26 to 464.52 square meters], one hundred twenty dollars.
5. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], one hundred ~~fifteen~~ forty dollars.
6. For a bar or tavern dispensing beer, liquor, or other alcoholic beverages, ~~sixty-five~~ eighty dollars.
7. For a mobile food unit or temporary food stand, ~~eighty-five~~ one hundred ten dollars.
8. For a food processing facility, ~~forty-five~~ sixty dollars.
9. For an assisted living facility, one hundred twenty dollars.
10. For a school, one hundred ~~fifteen~~ forty dollars.
11. For a child care facility, ~~thirty-five~~ fifty dollars.

If a business operates more than one type of food establishment on the same premises and under the same management, the department shall issue a single license stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed one hundred ~~twenty-five~~ fifty dollars for those establishments with not more than two thousand five hundred square feet [232.26 square meters], ~~one~~ two hundred ~~seventy~~ ten dollars for those establishments with two thousand five hundred square feet [232.26 square meters]

to not more than five thousand square feet [464.52 square meters], and two hundred ~~forty~~ ninety dollars for those establishments over five thousand square feet [464.52 square meters].

**History:** Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-01-03

**CHAPTER 33-39-02**  
**LICENSE FEES**

Section  
33-39-02-01 License Fees

**33-39-02-01. License fees.** The following annual license fees must be paid by proprietors of lodging establishments:

1. For a lodging establishment containing not more than three sleeping rooms, ~~forty~~ fifty dollars.
2. For a lodging establishment containing at least four sleeping rooms but not more than ten sleeping rooms, ~~fifty-five~~ seventy dollars.
3. For a lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, ~~eighty~~ one hundred dollars.
4. For a lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, one hundred twenty dollars.
5. For a lodging establishment containing ~~fifty-one~~ more than fifty sleeping rooms and not more than one hundred sleeping rooms ~~or more~~, one hundred ~~twenty-five~~ fifty dollars.
6. For a lodging establishment containing more than one hundred sleeping rooms and not more than two hundred fifty sleeping rooms, two hundred twenty-five dollars.
7. For a lodging establishment containing more than two hundred fifty sleeping rooms and not more than five hundred sleeping rooms, three hundred twenty-five dollars.
8. For a lodging establishment containing more than five hundred sleeping rooms and not more than one thousand sleeping rooms, four hundred fifty dollars.
9. For a lodging establishment containing more than one thousand sleeping rooms, six hundred dollars.

**History:** Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-09-02

## ARTICLE 33-41

### TATTOO AND BODY ART

Chapter	
33-41-01	Tattoo and Body Art

#### CHAPTER 33-41-01 TATTOO AND BODY ART

Section	
33-41-01-01	Definitions
33-41-01-02	Requirements for Premises
33-41-01-03	Body Art Operator Requirements
33-41-01-04	Public Notification Requirements
33-41-01-05	Client Records
33-41-01-06	Records Retention
33-41-01-07	Preparation and Care of the Body Art Area
33-41-01-08	Sanitation and Sterilization Procedures
33-41-01-09	Requirements for Single-Use Items
33-41-01-10	License Requirements
33-41-01-11	Temporary Establishment License
33-41-01-12	Temporary Demonstration Permit Requirements
33-41-01-13	Mobile Body Art Establishments
33-41-01-14	Enforcement

**33-41-01-01. Definitions.** The terms used throughout this article have the same meaning as in North Dakota Century Code Chapter 12.1-31, except:

1. "Aftercare" means written instructions given to the client, specific to the body art procedures rendered, about caring for the body art and surrounding area. These instructions must include information about when to seek medical treatment, if necessary.
2. "Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.
3. "Body art" means the practice of physical body adornment by permitted or licensed establishments and operators using techniques including body piercing, tattooing, cosmetic tattooing, branding, scarification, and subdermal implanting. This definition does not include, for the purpose of this article, piercing of the outer perimeter or lobe of the ear with presterilized single-use stud-and-clasp ear-piercing systems.
4. "Body art establishment" means any place or premise, whether public or private, temporary or permanent, in nature of location, where the practices of body art, whether or not for profit, are performed.

5. "Body piercing" means puncturing or penetration of the skin of a person with presterilized single-use needles and the insertion of presterilized jewelry or other adornment thereto in the opening, except that puncturing the outer perimeter or lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system shall not be included in this definition.
6. "Branding" means inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin, making a serious burn, which eventually becomes a scar.
7. "Contaminated waste" means any liquid or semiliquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semiliquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations part 1910.1030, known as "occupational exposure to bloodborne pathogens".
8. "Cosmetic tattooing" is included in the definition of tattooing.
9. "Department" means the state department of health.
10. "Disinfection" means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.
11. "Ear piercing" means the puncturing of the noncartilaginous perimeter or lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system following manufacturer's instructions. Under no circumstances shall ear-piercing studs and clasps be used anywhere on the body other than the outer perimeter and lobe of the ear.
12. "Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in connection with the operation of a body art establishment.
13. "Handsink" means a lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms, or other portions of the body.
14. "Hot water" means water that attains and maintains a temperature of at least one hundred degrees Fahrenheit.

15. "Instruments used for body art" means hand pieces, needles, needle bars, and other instruments that may come in contact with a client's body or may be exposed to bodily fluids during body art procedures.
16. "Invasive" means entry into the body either by incision or insertion of an instrument into or through the skin of mucosa, or by any other means intended to puncture, break, or compromise the skin or mucosa.
17. "Jewelry" means any personal adornment inserted into a newly pierced area, which may be made of surgical implant-grade stainless steel; solid fourteen karat or eighteen karat white or yellow gold, niobium, titanium, or platinum; or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and which has been properly sterilized prior to use.
18. "Liquid chemical germicide" means a disinfectant or sanitizer registered with the United States environmental protection agency or an approximately one-to-one hundred dilution of household chlorine bleach made fresh daily and dispensed from a spray bottle (five hundred parts per million, one-fourth cup per gallon, or two tablespoons per quart of tap water).
19. "Mobile body art establishment or unit" means a mobile establishment or unit which is self-propelled or otherwise movable from place to place and is self-sufficient for utilities such as gas, water, electricity, and liquid waste disposal which operates at a fixed location where a permitted or licensed operator performs body art procedures.
20. "Operator" means any person who controls, operates, manages, conducts, or practices body art activities at a body art establishment and who is responsible for compliance with these rules, whether actually performing body art activities or not. The term includes an assistant technician who works under the operator and performs body art activities.
21. "Person" means an individual, any form of business or social organization or any other nongovernmental legal entity, including corporations, partnerships, limited liability companies, associations, trusts, or unincorporated organizations.
22. "Physician" means a person currently licensed by the state of North Dakota to practice medicine pursuant to the provisions of chapter 43-17 of the North Dakota Century Code.
23. "Procedure surface" means any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or any associated work area which may require sanitizing.



24. "Sanitization procedure" means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by public health standards and which has been approved by the department.
25. "Sharps" means any objects (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa, including presterilized, single-use needles; scalpel blades; and razor blades.
26. "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the international biohazard symbol.
27. "Single-use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups, and protective gloves.
28. "Sterilization" means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.
29. "Tattooing" means any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.
30. "Temporary body art establishment" means any place or premise operating at a fixed location where an operator performs body art procedures for no more than fourteen days consecutively in conjunction with a single event or celebration.
31. "Ultrasonic unit" means a unit approved by the department, physically large enough to fully submerge instruments in liquid, which removes all foreign matter from the instruments by means of high-frequency oscillations transmitted through the contained liquid.
32. "Universal precautions" means a set of guidelines and controls, published by the centers for disease control and prevention (CDC) as "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health Care and Public Safety Workers" in *Morbidity and Mortality Weekly Report (MMWR)*, June 23, 1989, vol. 38, no. S-6, and as "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures", in *(MMWR)*, July 12, 1991, vol. 40, no. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids

are infectious for HIV, HBV, and other blood pathogens. Precautions include handwashing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood-contaminated and body fluid-contaminated products.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**33-41-01-02. Requirements for premises.** Following are the minimum requirements for construction, materials, and general condition of a body art establishment:

1. The operator of a new or extensively remodeled body art establishment shall submit a scale drawing and floor plan of the proposed establishment for a plan review by the department, as part of the license application process.
2. All walls, floors, ceilings, and procedure surfaces of a body art establishment shall be smooth, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs and benches, shall be of such construction as to be easily cleaned and sanitized after each client. All body art establishments shall be completely separated by solid partitions or by walls extending from floor to ceiling, from any room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces, exposed equipment, or client procedure sites.
3. Effective measures shall be taken by the body art operator to protect against entrance into the establishment and against the breeding or presence on the premises of insects, vermin, and rodents. Insects, vermin, and rodents shall not be present in any part of the establishment, its appurtenances, or appertaining premises.
4. There shall be adequate floor space for the operator in each procedure room. Each establishment shall have procedure rooms that may be closed or screened, or both, from public view for clients requesting privacy.
5. The establishment shall be well-ventilated and provided with an artificial light source equivalent to at least twenty foot candles measured three feet off the floor, except that at least one hundred foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

6. No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities (e.g., seeing eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.
7. A separate, readily accessible handsink with hot and cold running water, under pressure, preferably equipped with wrist-operated or foot-operated controls and supplied with liquid soap and disposable paper towels shall be readily accessible within the body art establishment. One handsink shall serve no more than three operators. In addition, there shall be a minimum of one lavatory, excluding service sinks, and one toilet in a body art establishment.
8. At least one covered waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily, and solid waste shall be removed from the premises at least weekly. All refuse containers shall be lidded, cleanable, and kept clean.
9. All instruments and supplies shall be stored in clean, dry, and covered containers.
10. Reusable cloth items shall be mechanically washed with detergent and chlorine bleach and dried after each use. The cloth items shall be stored in a dry, clean environment until used.

**History:** Effective January 1, 2008

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**33-41-01-03. Body art operator requirements.**

1. The following information shall be kept on file on the premises of a body art establishment and available for inspection by the department:
  - a. Employee information:
    - (1) Full names and exact duties;
    - (2) Date of birth;
    - (3) Gender;
    - (4) Home address;
    - (5) Home and work telephone numbers; and
    - (6) Identification photos of all body art operator/technicians.

- b. Establishment information:
    - (1) Establishment name;
    - (2) Hours of operation; and
    - (3) Owner's name and address.
  - c. A complete description of all body art procedures performed.
  - d. An inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or orders shall satisfy this requirement.
  - e. A copy of these regulations.
2. The body art operator must be a minimum of eighteen years of age.
  3. Smoking, eating, or drinking is prohibited in the area where body art is performed.
  4. Operators shall refuse service to any person who, in the opinion of the operator, is under the influence of alcohol or drugs.
  5. The operator shall maintain a high degree of personal cleanliness, conform to hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, operators must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.
  6. In performing body art procedures, the operator shall wear disposable medical gloves. Gloves must be changed if they become contaminated by contact with any nonclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed before the next set of gloves is donned. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable medical gloves does not preclude or substitute for handwashing procedures as part of a good personnel hygiene program.
  7. If, while performing a body art procedure, the operator's glove is pierced or torn, or otherwise contaminated, the procedure delineated in subsection 6 shall be repeated immediately. The contaminated gloves shall be immediately discarded, and the hands washed thoroughly as described in subsection 6 before a fresh pair of gloves is applied. Any item or instrument used for body art that is contaminated during

the procedure shall be discarded, and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.

8. Contaminated waste that may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled must be placed in an approved red bag marked with the international biohazard symbol. It must then be disposed of by a waste hauler approved by the department or, at a minimum, in compliance with 29 CFR part 1910.1030, "occupational exposure to bloodborne pathogens". Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste that does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste onsite shall not exceed the period specified by the department or more than a maximum of thirty days, as specified in 29 CFR part 1910.1030, whichever is less.
9. No person shall perform any body art procedure upon a person under the age of eighteen years without the presence, written consent, and proper identification of a parent, legal custodial parent, or legal guardian. Nothing in this section is intended to require an operator to perform any body art procedure on a person under eighteen years of age with parental or guardian consent.
10. Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
11. The skin of the operator shall be free of rash or infection. No person or operator affected with boils, infected wounds, open sores, abrasions, keloids, weeping dermatological lesions, or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that the person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.
12. The operator shall be vaccinated against the hepatitis B virus. The operator is responsible for ensuring that all individuals working at the operator's establishment initiate the hepatitis B vaccination series within thirty days of starting work unless the individuals have previously received the complete hepatitis B vaccination series and can provide documentation to the department, antibody testing has revealed that the individual is immune, or the vaccine is contraindicated for medical reasons.

13. The operator shall be certified in cardiopulmonary resuscitation.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

#### **33-41-01-04. Public notification requirements.**

1. Verbal and written public educational information, approved by the department, shall be required to be given to all clients wanting to receive body art procedures. Verbal and written instructions, approved by the department, for the aftercare of the body art procedure site shall be provided to each client by the operator upon completion of the procedure. The written instructions shall advise the client to consult a physician at the first sign of infection and shall contain the name, address, and telephone number of the establishment. These documents shall be signed and dated by both parties, with a copy given to the client and the operator retaining the original with all other required records. In addition, all establishments shall prominently display a disclosure statement, provided by the department, which advises the public of the risks and possible consequences of body art services. The facility licenseholder shall also post in public view the name, address, and telephone number of the local or state department that has jurisdiction over this program and the procedure for filing a complaint. The disclosure statement and the notice for filing a complaint shall be included in the establishment license application packet.
2. All infections, complications, or diseases resulting from any body art procedure that become known to the operator shall be reported to the department by the operator within twenty-four hours.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

#### **33-41-01-05. Client records.**

1. So that the operator can obtain knowledge about the client's health status for receiving a body art procedure, the operator or technician shall ask for the information as follows:

So your body art procedure heals properly, we ask that you disclose if you have or have had any of the following conditions:

- a. Diabetes;
- b. History of hemophilia (bleeding);

- c. History of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants, etc.;
  - d. History of allergies or adverse reactions to pigments, dyes, or other skin sensitivities;
  - e. History of epilepsy, seizures, fainting, or narcolepsy;
  - f. Use of medications such as anticoagulants, which thin the blood or interfere with blood clotting;
  - g. Use of medications other than routine antibiotics, allergy medication, or birth control pills;
  - h. Hepatitis;
  - i. HIV positive;
  - j. High blood pressure or heart disease;
  - k. Pregnancy;
  - l. Contagious diseases;
  - m. Immune system disorder; or
  - n. Serious physical or mental health problems.
2. The operator shall ask the client to sign a release form confirming that the information described in subsection 1 was obtained or that the operator attempted to obtain the information. The client shall be asked to disclose any other information that would aid the operator in evaluating the client's body art healing process.
3. Each operator shall keep records of all body art procedures administered, including client name and signature, date of birth, date, time, identification and location of the body art procedure performed, and the operator's name. If the client is a minor, proof of parental or guardian presence and consent must be obtained and signed and the record retained. All client records shall be confidential and be retained for a minimum of three years and made available to the department upon notification.

4. Nothing in this section shall be construed to require the operator to perform a body art procedure upon a client.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**33-41-01-06. Records retention.** The body art establishment shall keep a record of all persons who have had body art procedures performed. The record shall include the name, date of birth, and address of the client; the date and time of the procedure; the name of the operator who performed the procedures; type and location of procedure performed; and the signature of the client; and, if the client is a minor, proof of parental or guardian presence and consent, i.e., signature. Such records shall be retained for a minimum of three years and shall be available to the department upon request. The department and the body art establishment shall keep such records confidential.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**33-41-01-07. Preparation and care of the body art area.**

1. Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where the body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation, depending on the type of body art to be performed. If shaving is necessary, single-use disposable razors or safety razors with single-service blades shall be used. Blades shall be discarded after each use, and reusable holders shall be autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.
2. In the event of blood flow, all products used to check the flow of blood or to absorb blood shall be single-use and disposed of immediately after use in appropriate covered containers, unless the disposal products meet the definition of biomedical waste. The use of styptic pencils or alum solids shall not be used to check the flow of blood.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**33-41-01-08. Sanitation and sterilization procedures.**

1. All nonsingle-use, nondisposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water or by following the manufacturer's instructions, to remove blood and tissue residue,



and shall be placed in an ultrasonic unit also operated in accordance with the manufacturer's instructions.

2. After being cleaned, all nondisposable instruments used for body art shall be packed individually in peel-packs and subsequently sterilized as specified in subsection 3. All peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Peel-packs must be dated with an expiration date not to exceed six months.
3. All cleaned, nondisposable instruments used for body art shall be sterilized in a steam autoclave or dry-heat sterilizer (if approved by the department). The sterilizer shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the sterilization unit must be available for inspection by the department. Sterile equipment may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing. Sterilizers shall be located away from workstations or areas frequented by the public. If the body art establishment uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.
4. Each holder of a license to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. The license shall not be issued or renewed until documentation of the sterilizer's ability to destroy spores is received by the department. These test records shall be retained by the operator for a period of three years and made available to the department upon request.
5. Tattoo needles and piercing needles are not reusable under any circumstances. After use, all needles, razors, and other sharps shall be immediately disposed of in red sharps containers, appropriately labeled with the international biohazard symbol. After sterilization, all reusable instruments used for tattooing or body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.
6. All instruments used for tattooing or body piercing shall remain stored in sterile packages until just prior to the performance of a body art procedure. When assembling instruments used for body art procedures, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.
7. All inks, dyes, pigments, needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions. The mixing of approved inks,

dyes, or pigments or their dilution with potable water is acceptable. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic cups. Upon completion of the tattoo, these single cups or cups and their contents shall be discarded.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

### **33-41-01-09. Requirements for single-use items.**

1. Single-use items shall not be used on more than one client for any reason. After use, all single-use needles, razors, and other sharps shall be immediately disposed of in approved sharps containers.
2. All products applied to the skin, including body art stencils, shall be single-use and disposable. If the department approves, acetate stencils shall be allowed for reuse if sanitization procedures as specified in subsection 24 of section 33-41-01-01 are performed between uses. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to be tattooed with sterile gauze or in a manner to prevent contamination of the original container and its contents. The gauze shall be used only once and then discarded.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

### **33-41-01-10. License requirements.**

1. No person, firm, partnership, joint venture, association, business trust, corporation, or organized group of persons may operate a body art establishment except with a body art establishment license from the department.
2. It is prohibited to obtain or attempt to obtain any body art establishment or operator permit by means of fraud, misrepresentation, or concealment.
3. A license for a body art establishment shall not be transferable from one place or person to another.
4. The current body art establishment license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.

5. The annual license fee for all types of body art establishments is one hundred ~~ten~~ thirty-five dollars.

**History:** Effective January 1, 2008; amended effective January 1, 2014.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**33-41-01-11. Temporary establishment license.** Temporary establishment licenses, when required, may be issued for body art services provided outside of the physical site of a certified facility for the purposes of product demonstration, industry trade shows, or education. Temporary establishment licenses will not be issued unless:

1. The applicant furnishes proof of compliance with section 33-41-01-10 relating to license requirements;
2. The applicant is currently affiliated with a fixed location or permanent facility which, where applicable, is licensed by the appropriate state or local jurisdiction; and
3. The temporary site complies with section 33-41-01-12 temporary demonstration license requirements.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**33-41-01-12. Temporary demonstration permit requirements.**

1. A person who wishes to obtain a temporary demonstration license must submit the request in writing for review by the department at least thirty days prior to the event. The request must specify:
  - a. The purpose for which the license is requested.
  - b. The period of time during which the license is needed, not to exceed fourteen calendar days per event, without reapplication.
  - c. The location where the temporary demonstration license will be used.
2. The applicant's demonstration project must be contained in a completely enclosed, nonmobile facility (e.g., inside a permanent building).
3. Compliance with all of the requirements of this code includes the following:

- a. Conveniently located handwashing facilities with liquid soap, paper towels, and hot and cold water under adequate pressure shall be provided. Drainage in accordance with local plumbing codes is to be provided. Tuberculocidal single-use hand wipes, approved by the department, to augment the handwashing requirements of this section must be available in each booth or cubicle.
  - b. There shall be at least one hundred foot candles of light at the level where the body art procedure is being performed.
  - c. Facilities to properly sterilize instruments and evidence of a spore test performed on sterilization equipment thirty days or less prior to the date of the event must be provided, or only single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers will be allowed.
  - d. Ability to properly clean and sanitize the area used for body art procedures is required.
4. The facility where the temporary demonstration license needed must be inspected by the department and the license issued prior to the performance of any body art procedure.
  5. Temporary demonstration licenses issued under the provisions of this code may be suspended by the department for failure of the holder to comply with the requirements of this code.
  6. All establishment licenses and the disclosure notice must be readily seen by clients.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**33-41-01-13. Mobile body art establishments.** In addition to complying with all of the requirements of this code, mobile body art vehicles working from a mobile body art establishment shall also comply with all of the following requirements:

1. Mobile body art establishments are licensed annually, and no body art procedures are to be performed before a license is issued. Licenseholders are responsible for ensuring that all other local agency regulations are complied with, including zoning and business license requirements.
2. Body art performed pursuant to this section shall be done only from an enclosed vehicle such as a trailer or mobile home. No body art procedures shall be performed outside of the enclosed vehicle.

3. The mobile body art establishment shall be maintained in a clean and sanitary condition at all times. Doors shall be self-closing and tight-fitting. Openable windows shall have tight-fitting screens.
4. Mobile body art establishments must have approved sterilization equipment available, in accordance with all requirements of section 33-41-01-08.
5. The mobile body art establishment shall be used only for the purpose of performing body art procedures. No habitation or food preparation is permitted inside the vehicle unless the body art workstation is separated by walls, floor to ceiling, from culinary or domicile areas.
6. The mobile body art establishment shall be equipped with an equipment washing sink and a separate handsink for the exclusive use of the operator for handwashing and preparing the client for the body art procedure. The handsink shall be supplied with hot and cold running water under pressure to a mixing type faucet and liquid soap and paper towels in dispensers. An adequate supply of potable water shall be maintained for the mobile body art establishment at all times during operation. The source of the water and storage, in gallons, of the tanks shall also be identified. Tuberculocidal single-use hand wipes, approved by the department, to augment the handwashing requirements of this section, must be available.
7. All liquid wastes shall be stored in an adequate storage tank with a capacity at least fifty percent greater than the capacity of the onboard potable water supply. Liquid wastes shall be disposed of at a site approved by the department.
8. Restroom facilities must be available within the mobile body art establishment. A handsink must be available inside the restroom cubicle. The handsink shall be supplied with hot and cold running water under pressure to a mixing type faucet, as well as liquid soap and paper towels in dispensers. Restroom doors must be self-closing and adequate ventilation must be available.
9. No animals, except service animals of clients, shall be allowed in the mobile body art establishment at any time.
10. Mobile body art establishments must receive a preoperational inspection to ensure compliance with structural requirements.
11. All mobile body art establishment licenses, as well as the disclosure notice, must be readily seen by clients.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

### **33-41-01-14. Enforcement.**

1. It is a class B misdemeanor for establishments that continue to operate without proper permits from the department or operate in violation of these regulations.
2. A representative of the department shall provide proper identification as such before entering a body art establishment to make an inspection. Such an inspection must be conducted as often as necessary throughout the year to ensure compliance with this code.
3. It is unlawful for any person to interfere with the department in the performance of its duties.
4. A copy of the inspection report must be furnished to the licenseholder or operator of the body art establishment, with the department retaining possession of the original.
5. If, after investigation, the department should find that a licensee is in violation of this code, the department may advise the licensee, in writing, of its findings and instruct the licensee to take specific steps to correct such violations within a reasonable period of time.
6. If the department has reasonable cause to suspect that a communicable disease is or may be transmitted by an operator, by use of unapproved or malfunctioning equipment, or by unsanitary or unsafe conditions that may adversely affect the health of the public, upon written notice to the owner or operator, the department may do any or all of the following:
  - a. Issue an order excluding any or all operators from the licensed body art establishment who are responsible, or reasonably appear responsible, for the transmission of a communicable disease until the department determines there is no further risk to public health.
  - b. Issue an order to immediately suspend the license of the establishment until the department determines there is no further risk to the public health. Such an order shall state the cause for the action.
7. Licenses issued under the provisions of the code may be suspended temporarily by the department for failure of the holder to comply with the requirements of this code.
8. Whenever a licenseholder or operator has failed to comply with any notice issued under the provisions of this code, the operator must be notified in writing that the license is, upon service of this notice, immediately suspended. The notice must also contain a statement informing the licenseholder or operator that an opportunity for a hearing

will be provided if a written request for a hearing is filed with the department.

9. Any person whose license has been suspended may, at any time, make application for reinstatement of the license. Within ten days of receipt of a written request, including a statement signed by the applicant, that in the applicant's opinion the conditions causing the suspension have been corrected, the department shall reinspect the body art establishment or evaluate documentation provided by an operator. If the applicant is in compliance with the provisions of this code, the license will be reinstated.
10. For repeated or serious (any code infraction that threatens the health of the client or operator) violations of any of the requirements of this code or for interference with department personnel in the performance of their duties, a license may be permanently revoked after a hearing. Before taking such action, the department shall notify the licenseholder or operator in writing, stating reasons for which the license is subject to revocation and advising the licenseholder or operator of the requirements for filing a request for a hearing. A license may be suspended for cause, pending its revocation or hearing relative thereto.
11. The department may permanently revoke a permit after five days following service of the notice unless a request for hearing is filed within the five-day period with the department by the licenseholder.
12. The hearings provided for in this section must be conducted by the department at a time and place designated by the hearing officer. On the basis of the record of the hearing, the department shall make a finding and may sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision must be furnished to the licenseholder or operator by the department.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-01-35

**Law Implemented:** NDCC 23-01-35

**ARTICLE 33-42**

**TANNING FACILITIES**

Chapter  
33-42-01 Tanning Facilities

**CHAPTER 33-42-01**  
**Tanning Facilities**

Section	
33-42-01-01	Applicability
33-42-01-02	Definitions
33-42-01-03	Advertising
33-42-01-04	Warning Sign
33-42-01-05	Lamp Replacement
33-42-01-06	Duties of the Operator
33-42-01-07	Cleanliness and Sanitation
33-42-01-08	Reports of Injury
33-42-01-09	Recordkeeping
33-42-01-10	Permits - Licenses
33-42-01-11	Denial, Suspension, or Revocation of License

**33-42-01-01. Applicability.** This chapter applies to all persons who possess or operate tanning devices available to the public for the purpose of artificial light skin tanning, including those offered for use as part of a membership or premium offer in a health club, condominium, apartment complex activity center, or hotel or motel rental.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

**33-42-01-02. Definitions.** The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 23-39 except:

1. "Applicant" means any person who applies to the department for a license to operate a tanning facility.
2. "Customer" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a benefit of membership in or access to a health club, condominium ownership, apartment complex activity center, hotel or motel room rental, or other offer.
3. "Department" means the state department of health.



4. "Operator" means an individual designated by the licenseholder to manage the tanning facility and to assist and instruct the public in the correct operation of the tanning devices.
5. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group or agency, or a representative or agent of any of these.
6. "Protective eyewear" means any apparatus designed to be worn over the eyes by a user of tanning devices which absorbs all UV-A, UV-B, and visible light up to five hundred nanometers but permits sufficient light to pass through to allow a user to safely negotiate obstacles, and that complies with the standards set forth in 21 CFR 1040.20.
7. "Radiation" means ultraviolet radiation.
8. "Ultraviolet radiation" means electromagnetic radiation with a wavelength in air of two hundred to four hundred nanometers.
9. "UV-A" means ultraviolet radiation having a wavelength in air of three hundred twenty to four hundred nanometers.
10. "UV-B" means ultraviolet radiation having a wavelength in air of two hundred ninety to three hundred twenty nanometers.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

#### **33-42-01-03. Advertising.**

1. No tanning facility may state in any advertising, written or verbal, that tanning is free of hazards from ultraviolet radiation or has any health benefits other than those recognized by a credible scientific or medical source.
2. No person may state or imply that any activity under a license has been approved by the department.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

#### **33-42-01-04. Warning sign.**

1. **Location and content.** Tanning facilities shall prominently display a warning sign in each area where a tanning device is used. A sign shall be located within one meter of each device. The sign shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, or

other item present so that the customer can easily view the warning sign before turning on the tanning device.

2. **Lettering.** The lettering on each warning sign shall be at least five millimeters high for the word "WARNING", All capital letters shall be at least five millimeters high and all lowercase letters shall be at least three millimeters high. The warning sign must contain the following warnings:

<p style="text-align: center;"><b>WARNING</b></p> <p style="text-align: center;"><b>DANGER - ULTRAVIOLET RADIATION</b></p> <p>Follow Instructions.</p> <p>Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.</p> <p><b>WEAR FOOD AND DRUG ADMINISTRATION-APPROVED PROTECTIVE EYEWEAR. FAILURE TO WEAR PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.</b></p> <p>Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.</p> <p>Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.</p> <p>If your skin does not tan when exposed to sun, it is unlikely that your skin will tan when exposed to this tanning device.</p>
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**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

**33-42-01-05. Lamp replacement.**

1. The tanning facility shall maintain a record of the dates on which the tubes, bulbs, or lamps were replaced.
2. The tubes, bulbs, or lamps shall be replaced at the frequency recommended by the manufacturer or when the tubes, bulbs, or lamps become damaged or defective. A replacement lamp for a tanning unit shall be compatible with the original lamp as specified by the manufacturer of the unit or shall be substantially equivalent to the manufacturer's original lamp type. In this subsection, "substantially equivalent" means within ten percent of the UV-B emission of the original lamp and meeting the performance requirements of the United States food and drug administration in 21 CFR 1040.20(c)(1).

3. The facility shall maintain the device manufacturer's literature indicating the rating, output, or intensity of the tube, lamp, or bulb required for replacement.
4. No tube, bulb, or lamp designated for medical use only may be used.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

#### **33-42-01-06. Duties of the operator.**

1. Use only tanning equipment manufactured and certified to comply with 21 CFR part 1040, section 1040.20, "sunlamp products and ultraviolet lamps intended for use in sunlamp products", in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR part 1010 section 1010.3.
2. Use only tanning equipment that has a timer which complies with the requirements of 21 CFR part 1040, section 1040.20(c)(2). The timer shall be incorporated in the tanning device. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.
3. Ensure that protective acrylic sheets are in place when a tanning device is in use, except that the protect acrylic may be sleeves over the lamps in the upper portion of a device or over lamps in booth devices.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

#### **33-42-01-07. Cleanliness and sanitation.**

1. Walls, floors, and fixtures shall be kept clean at all times in the entire facility.
2. No article or equipment shall be used or offered for use by a patron unless that article has first been cleaned with an environmental protection agency-approved sanitizer. A test kit or other device that accurately measures the concentration of the sanitizing solution in parts per million shall be used to measure the strength of the sanitizing solution when the concentrate and water dilution is initially prepared and at least daily thereafter to ensure sufficient strength of the sanitizing solution.
3. Paper towels or a clean cloth towel shall be provided. If reusable cloth towels are provided, they shall be mechanically washed with detergent

and mechanically dried after each use. The cloth towels must be stored in a dry, clean environment until used.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

**33-42-01-08. Reports of injury.** If a customer of a tanning facility reports a sunburn injury to that facility resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the department on a form prescribed by the department. The report shall be sent to the department as soon as possible and shall include:

1. The name of the affected individual and date of the actual or alleged injury.
2. The name and location of the tanning facility.
3. The nature of the alleged injury and duration of the tanning exposure.
4. Information on the device involved, such as manufacturer and model number and any other information considered relevant to the situation.
5. The name and address of the health care provider and treatment, if any.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

**33-42-01-09. Recordkeeping.**

1. The operator of a tanning facility shall maintain the following records:
  - a. Each customer's total number of tanning visits and dates and duration of tanning exposure.
  - b. Each customer's signature and acknowledgment that the customer has read and understands the written notice as required in subsection 2 of section 23-39-03 of the North Dakota Century Code and the warning sign as prescribed in section 33-42-01-04 of this chapter.
  - c. Each parental or legal guardian's written consent for customers under eighteen years of age as required in subdivision a of subsection 1 of section 23-39-05 of the North Dakota Century Code.

All customer records shall be maintained for three years after the last tanning visit.

2. The operator shall maintain the following information for each tanning device:
  - a. Manufacturer's equipment or operator's manual and any service-related material.
  - b. Inspections, maintenance, and notifications performed on the tanning device, including the date of service and dates of bulb replacement. Device records shall be maintained for three years.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

**33-42-01-10. Permits - Licenses.** A person may not operate a tanning facility without a license issued by the department. The department will conduct a preoperational inspection prior to initial licensure or changes in ownership to insure operator compliance and understanding of all laws and regulations. License renewals must be submitted to the department during December every year. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date. A reduced license fee in the amount of one-half of the applicable license fee must be charged for a new facility that begins operation after July first of each year. Licenses are not transferable. The annual license fee for a tanning facility ~~is ninety dollars for facilities with up to ten tanning beds~~ containing one to five tanning beds is seventy-five dollars plus ten dollars per bed and one hundred ~~ten~~ fifty dollars for facilities with more than ~~ten~~ five beds.

**History:** Effective January 1, 2008; amended effective January 1, 2014.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07

**33-42-01-11. Denial, suspension, or revocation of license.**

1. The department may deny issuance of a license or suspend or revoke a license issued under this chapter if the applicant or licenseholder does not comply with or violates chapter 23-39 of the North Dakota Century Code or any provision of this chapter or if the applicant or licenseholder does any of the following:
  - a. Submits false or misleading information in the application or in reports.
  - b. Fails to construct, operate, or maintain the tanning facility in accordance with the application.
  - c. Operates the tanning facility in a way that causes or creates a nuisance or hazard to the public health or safety.

- d. Violates any condition upon which the license was issued.
  - e. Fails to allow the department or a duly authorized agent to inspect the facility at a reasonable hour and in a reasonable manner for the purpose of determining compliance with this chapter.
  - f. Fails to pay the license fee.
2. Whenever the proprietor of any tanning facility fails to comply with this chapter, the operator must be given notice of the time within which the proprietor must meet the requirements. The notice must be in writing and delivered personally by an inspector of the department or sent by registered mail.

**History:** Effective January 1, 2008.

**General Authority:** NDCC 23-39-07

**Law Implemented:** NDCC 23-39-07