

CHAPTER 50-32 ASSISTED LIVING FACILITIES

50-32-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16 or section 50-11-01.4.
2. "Department" means the department of human services.
3. "Entity" means an individual, institution, organization, limited liability company, or corporation, whether or not organized for profit.
4. "Individualized support services" means services provided to individuals who may require assistance with the activities of daily living of bathing, dressing, toileting, transferring, eating, medication management, and personal hygiene.
5. "Living unit" means a portion of an assisted living facility that contains a sleeping area, an entry door that can be locked, and a private bath with a toilet, bathtub or shower, and sink and which is occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.
6. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner's or manager's spouse or former spouse.

50-32-02. Licensing of assisted living facilities - Penalty.

1. An entity may not keep, operate, conduct, manage, or maintain an assisted living facility or use the term "assisted living" in its advertising unless it is licensed by the department.
2. An assisted living facility shall pay to the department an annual license fee of seventy-five dollars for each facility. License fees collected under this section must be deposited in the department's operating fund in the state treasury. An expenditure from the fund is subject to appropriation by the legislative assembly.
3. An assisted living facility shall apply annually to the department for a license. After the fifty-ninth day following the notification of noncompliance with annual licensing, the department may assess a fine of up to fifty dollars per day against an entity that provides assisted living services or uses the term assisted living in its marketing without a license approved by the department. Fines collected under this section must be deposited in the department's operating fund in the state treasury. An expenditure from the fund is subject to appropriation by the legislative assembly.
4. Religious orders providing individualized support services to vowed members residing in the order's retirement housing are not subject to this chapter.

5. No more than two people may occupy one bedroom of each living unit of an assisted living facility.

50-32-02.1. Continuation of existing licenses.

1. An assisted living facility that possessed a valid license issued by the department of human services before August 1, 2005, may not be subsequently denied a license by the department of human services merely due to failure to meet the requirements of sections 23-09-01, 50-32-01, and 50-32-02 provided that the assisted living facility meets all other licensing requirements.
2. If there is a change in ownership of an assisted living facility that possessed a valid license issued before August 1, 2005, the department of human services shall allow a continuance of the exception to the licensure requirements under subsection 1 for the new owner. The continuance provided under this subsection applies to the first change in ownership after July 31, 2005, and does not apply to any subsequent change in ownership.

50-32-03. Powers and duties of the department. The department shall:

1. Take action and give directions necessary to implement this chapter.
2. Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.
3. Establish rules governing the licensing of assisted living facilities to regulate the application for, approval, denial, revocation, and requirements of a license.

50-32-04. Assisted living facility health services. An entity may provide health services to individuals residing in an assisted living facility owned or operated by that entity. For purposes of this section, health services means services provided to an individual for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

50-32-05. Assisted living facilities - Duties - Educational requirements.

1. Each assisted living facility must have clear, concise, and understandable tenancy criteria that is fully disclosed to all tenants, in writing, before the tenancy agreement is signed. Before a facility unit is rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria.
2. Each assisted living facility shall require the administrator of the facility to complete twelve hours of continuing education per year. The assisted living facility shall require all direct care staff to receive annual education or training in the areas of:
 - a. Resident rights;
 - b. Fire and accident prevention and training;
 - c. Mental and physical health needs of tenants;
 - d. Behavior problems and prevention; and
 - e. Control of infection, including universal precautions.
3. Each assisted living facility shall maintain a record for each tenant. The tenant record must include:
 - a. An initial evaluation to meet tenancy criteria;

- b. The tenancy agreement signed by the tenant or the tenant's legal representative;
 - c. If applicable, a medication administration record that documents medication administration consistent with applicable state laws, rules, and practices; and
 - d. An itemized list of services provided for the tenant.
4. Before hiring, the assisted living facility shall conduct a reference and previous employment check and a check of applicable registries of each applicant being considered for employment at the facility.
 5. At least once every twenty-four months, each assisted living facility shall conduct a consumer satisfaction survey. The assisted living facility shall provide each tenant with a copy of the results of the survey.

**CHAPTER 75-03-34
LICENSING OF ASSISTED LIVING FACILITIES**

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75-03-34-01. Definitions.

1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under North Dakota Century Code chapter 23-16 or 25-16 or section 50-11-01.4.
2. "Department" means the North Dakota department of human services.
3. "Entity" means an individual, institution, organization, limited liability company, or corporation, whether or not organized for profit.
4. "Individualized support services" means services provided to individuals who may require assistance with the activities of daily living of bathing, dressing, toileting, transferring, eating, medication management, and personal hygiene.
5. "Living unit" means a portion of an assisted living facility that contains a sleeping area, an entry door that can be locked, and a private bath with a toilet, bathtub or shower, and sink and which is occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.
6. "Medication management" means providing assistance to an assisted living facility tenant with prescribed medications.
7. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister,

stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.

History: Effective January 1, 2002; amended effective March 1, 2004; July 1, 2006.

General Authority: NDCC 50-32-03

Law Implemented: NDCC 50-32-01

75-03-34-02. Licensing.

1. An assisted living facility shall apply to the department for a license in the form and manner prescribed by the department. The department shall notify a licensed assisted living facility of the need to renew its license at least thirty days prior to expiration of that license. The notice must include the form required to renew a license.
2. An application for a license is not complete until the applying assisted living facility submits all required information and verification to the department.
3. The department shall approve or deny an application for a license within thirty days of the department's receipt of complete application materials from an assisted living facility.
4. In order to receive and maintain a license, an assisted living facility shall:
 - a. Pay a licensing fee of seventy-five dollars to the department annually. The licensing fee shall not be prorated nor is any part refundable;
 - b. Maintain a written agreement with each tenant that includes the rates for rent and services provided to the tenant, payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections;
 - c. Provide each tenant with written notice of how a tenant may report a complaint regarding the assisted living facility, which includes the telephone number of the department's senior info-line and the address of the aging services division of the department; and
 - d. Certify that operation of its facility is in compliance with all applicable federal, state, and local laws and, upon request, make available to the department copies of current certifications, licenses, permits, and other similar documents evidencing compliance with such laws.
5. A license is valid for the calendar year in which it is issued. A license is not subject to sale, assignment, or other transfer, voluntary or involuntary. A license is not valid for any premises or entity other than those for which it was originally issued.

6. An assisted living facility must submit to the department an application for license renewal thirty days prior to the calendar yearend. An assisted living facility is subject to the same requirements and has the same responsibility to furnish information for a renewal of its license as it did during its initial application.
7. An assisted living facility shall display its license in a conspicuous place on its premises.
8. No more than two people may occupy one bedroom of each living unit of an assisted living facility.

History: Effective January 1, 2002; amended effective March 1, 2004; July 1, 2006.

General Authority: NDCC 50-32-03

Law Implemented: NDCC 50-32-02

75-03-34-03. Revocation of license.

1. The department may deny or revoke an assisted living facility's license if:
 - a. The application for a license or renewal of a license or supporting documents contain fraudulent or untrue representations or if the license was otherwise issued based upon bribery or fraudulent or untrue representations;
 - b. The assisted living facility is in violation of this chapter or is unwilling or unable to conform to the requirements of this chapter;
 - c. The assisted living facility, or the premises proposed for the assisted living facility, is not or will not be maintained according to this chapter;
 - d. The assisted living facility is denied any license necessary under federal, state, or local law or such license has been revoked;
 - e. The assisted living facility refuses to allow the department access to any material or information necessary to determine compliance with licensing requirements; or
 - f. The assisted living facility demonstrates a pattern of failing to abide by the terms of its contract with tenants.
2. Except when conditions exist that present imminent danger to assisted living facility tenants, the effective date of a revocation of a license shall be thirty days from the date the department provides written notification to the assisted living facility of the department's decision to revoke the license.

3. The revocation notice to the assisted living facility must include the basis of the department's decision, the effective date of the revocation, and information regarding the assisted living facility's right to request reconsideration by the department.
4. The assisted living facility must notify all tenants and third-party payers of the department's revocation of its license within fifteen days from the date of the final revocation notice.

History: Effective January 1, 2002; amended effective March 1, 2004.

General Authority: NDCC 50-32-03

Law Implemented: NDCC 50-32-02

75-03-34-04. Complaints.

1. The department shall receive complaints made by, or on behalf of, assisted living facility tenants. The department shall forward complaints regarding assisted living facilities to the appropriate agency, entity, or program for investigation.
2. The department shall request the agency to which complaints are referred to report its findings and disposition of the complaint to the department.

History: Effective January 1, 2002.

General Authority: NDCC 50-32-03

Law Implemented: NDCC 50-32-02

75-03-34-05. Enforcement.

1. The department shall provide written notice of the need for a license to any individual, institution, organization, limited liability company, or public or private corporation that provides assisted living services or uses the term assisted living in its marketing which does not have a license issued by the department.
2. Sixty days after the written notification of noncompliance with annual licensing, the department may assess a fine of up to fifty dollars per day against any individual, institution, organization, limited liability company, or public or private corporation that provides assisted living services or uses the term assisted living in its marketing without a license issued by the department.

History: Effective January 1, 2002; amended effective March 1, 2004.

General Authority: NDCC 50-32-03

Law Implemented: NDCC 50-32-02

CHAPTER 23-09

LODGING ESTABLISHMENTS AND ASSISTED LIVING FACILITIES

23-09-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16 or section 50-11-01.4.
2. "Bakery" means an establishment or any part of an establishment that manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.
3. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.
4. "Department" means the state department of health.
5. "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, school, child care, or similar place in which food or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.
6. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
7. "Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.
8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to transient guests. The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-32-01.
9. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.

10. "Proprietor" includes the person in charge of a food establishment, lodging establishment, or assisted living facility, whether as owner, lessee, manager, or agent.
11. "Pushcart" means a non-self-propelled vehicle limited to serving nonpotentially hazardous food or commissary-wrapped food maintained at proper temperatures.
12. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished. The term includes a limited restaurant restricted to a specified menu.
13. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for offpremise consumption. The term includes a delicatessen that offers prepared food in bulk quantities only. The term does not include an establishment that handles only prepackaged nonpotentially hazardous foods, roadside market that offers only fresh fruits and vegetables for sale, food service establishment, or food and beverage vending machine.
14. "Retail meat market" means a commercial establishment and buildings or structures connected with it, used to process, store, or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.
15. "Salvage processing facility" means an establishment engaged in the business of reconditioning or by other means salvaging distressed merchandise for human consumption or use.
16. "Temporary food service establishment" means any food service establishment that operates at a fixed location for not more than fourteen consecutive days. The term does not include a nonprofit public-spirited organization or person providing a limited type of food service as defined in chapter 23-09.2.

23-09-02. State department of health to enforce provisions of chapter. The department shall enforce the provisions of this chapter. Under no circumstances may any other state agency adopt rules that relate in any way to the provisions of this chapter.

23-09-02.1. Smoke detection devices or other approved alarm systems - Administrative procedure and judicial review. Each lodging establishment and assisted living facility shall install smoke detection devices or other approved alarm systems of a type and in the number approved by the department, in cooperation with the state fire marshal. The department, in cooperation with the state fire marshal, shall adopt reasonable rules governing the spacing and minimum specifications for approved smoke detection devices or other approved alarm systems. The department and state fire marshal shall provide all reasonable assistance required in complying with the provisions of this section.

23-09-03. Exiting requirements. Every lodging establishment and assisted living facility constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 with the following exceptions:

1. All lodging establishments and assisted living facilities in existence at the time of implementation of this section are required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.

2. If the lodging establishment or assisted living facility is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

23-09-04. Fire escapes in hotels and lodginghouses not more than two stories high. Repealed by S.L. 1985, ch. 292, § 5.

23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required. Access to fire escapes required under this chapter must be kept free and clear at all times of all obstructions of any nature. The proprietor of the lodging establishment or assisted living facility shall provide for adequate exit lighting and exit signs as defined in the state building code, chapter 54-21.3.

23-09-06. Chemical fire extinguishers - Standpipes. Each lodging establishment or assisted living facility must be provided with fire extinguishers as defined by the national fire protection association standard number ten in quantities as defined by the state building code and the state fire code. Standpipe and sprinkler systems must be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems must conform with rules adopted by the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building is not enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal may be sold or offered for sale within the state.

23-09-07. Lodging establishments or assisted living facilities with elevators - Protection to prevent spread of fire. All new construction of, remodeling of, or additions to lodging establishments or assisted living facilities equipped with passenger or freight elevators must comply with state building code fire protection requirements.

23-09-08. Bolts or locks to be supplied on doors of sleeping rooms. The doors of all rooms used for sleeping purposes in any lodging establishment within this state must be equipped with proper bolts or locks to permit the occupants of such rooms to lock or bolt the doors securely from within the rooms. The locks or bolts must be constructed in a manner that renders it impossible to unbolt or unlock the door from the outside with a key or otherwise, or to remove the key therefrom from the outside, while the room is bolted or locked from within. Any lodging establishment proprietor who fails to comply with this section is guilty of a class B misdemeanor.

23-09-09. Sanitation and safety. Every food establishment, lodging establishment, and assisted living facility must be operated with strict regard for the health, safety, and comfort of its patrons. The following sanitary and safety regulations must be followed:

1. Every food establishment, lodging establishment, and assisted living facility must be well constructed, drained, and provided with plumbing equipment according to established sanitary principles and must be kept free from effluvia arising from any sewerage, drain, privy, or other source within the control of the proprietor.
2. In municipalities in which a system of public water supply and sewerage is maintained, every food establishment, lodging establishment, and assisted living facility must be equipped with suitable toilets for the accommodation of its guests, and such toilets must be ventilated and connected by proper means of flushing with the water of said system. All lavatories, bathtubs, sinks, drains, and toilets must be connected with such sewerage system and installed according to all applicable plumbing codes.
3. When a sewerage system is not available, open toilets must be located not less than forty feet [12.19 meters] from all kitchens, dining rooms, and pantry openings and must be properly cleaned, screened, and disinfected as often as may be necessary to keep them in a sanitary condition.

4. All garbage and kitchen refuse must be kept in watertight containers with tight-fitting covers to prevent decomposition. No dishwasher or other substance which is or may become foul or offensive may be thrown upon the ground near any food establishment, lodging establishment, or assisted living facility.
5. All bedrooms must be kept free from insects and rodents, and the bedding in use must be clean and sufficient in quantity and quality.
6. Each food establishment, lodging establishment, or assisted living facility shall keep in its main public washroom and available at all hours individual disposable paper towels, a continuous towel system that supplies the user with a clean towel, or a heated air hand drying device for the use of its guests.
7. Bathrooms, toilet rooms, and laundry rooms must be provided with either natural or mechanical ventilation connected directly to the outside.
8. All food establishments, lodging establishments, or assisted living facilities shall equip operable windows during the summer months with screens adequate to keep out insects.
9. Neither the dining room nor kitchen of any food establishment, lodging establishment, or assisted living facility may be used as a sleeping or dressing room by any employee of the hotel or restaurant or by any other person.

23-09-10. Drinking water standards. Every person operating a food establishment, lodging establishment, or assisted living facility shall see that the drinking water supplied therein is obtained from an approved source that is a public water system or a nonpublic water system that is constructed, maintained, and operated according to law.

23-09-11. Inspection - Reports. Every lodging establishment, food establishment, or assisted living facility must be inspected at least once every two years by the department. Food establishments and assisted living facilities must be inspected based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, population served, and previous compliance history. The department and its inspectors may enter any such establishment at reasonable hours to determine compliance with this chapter.

23-09-12. Certificate of inspection - When issued - Posting. Repealed by S.L. 1997, ch. 33, § 25.

23-09-13. False certificate - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

23-09-14. Department to report to state fire marshal. The department, before the sixth day of each month, shall report to the state fire marshal on all food establishments, lodging establishments, or assisted living facilities inspected by the department during the preceding month, paying particular attention in the report to the violation of any provision of this chapter relating to fire escapes and the installation and maintenance of automatic or other fire alarms and fire extinguishing equipment and to any other condition that might constitute a fire hazard in the premises so inspected. If no such violation or condition is found, the report must so state.

23-09-15. Obstructing inspection - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

23-09-16. License - Application. Before any food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility may be operated in this state, it must be licensed by the department. The department shall waive the license requirement for any food establishment, lodging establishment, or assisted living facility licensed by a city or district health unit if the local health unit's sanitation, safety, and inspection rules are approved by the department. Application for license must be made to the department during December of every year, or before the operating of the food establishment, lodging establishment, pushcart,

mobile food unit, or assisted living facility, as the case may be. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. 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 the applicable license fee must be charged for a new food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility beginning operations after July first of each year and for changes in ownership and location of such existing establishments after July first of each year. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees. The fees must be based on the cost of reviewing construction plans, conducting routine and complaint inspections, and necessary enforcement action. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

23-09-17. License fees. Repealed by S.L. 2005, ch. 32, § 19.

23-09-18. Failure to comply with chapter - Notice - How served. Whenever the proprietor of any food establishment, lodging establishment, or assisted living facility fails to comply with this chapter, the proprietor 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.

23-09-19. State's attorney to prosecute violation. The state's attorney of any county of this state, upon complaint on oath of an inspector of the department, shall prosecute in the name of the state of North Dakota a proper proceeding against any person violating any provision of this chapter.

23-09-20. Requirements of fireproof hotel - Penalty for false advertising. No person may advertise as fireproof a building or hotel unless all foundations, floors, roofs, walls, stairways, stairs, elevator shafts, and dumbwaiter shafts are constructed of concrete, brick, terra cotta blocks, steel, or other fireproof material. Any person violating the provisions of this section is guilty of a class A misdemeanor.

23-09-20.1. Guest record. A record must be kept in each lodging establishment in which every individual patronizing the lodging establishment shall write that individual's name and address and the number of members in the party who will occupy a room or rooms therein.

23-09-21. Penalty - General. Any person operating a food establishment, lodging establishment, or assisted living facility in this state, or letting a building used for such business, without first having complied with this chapter, is guilty of a class B misdemeanor.

23-09-22. License canceled. Whenever the proprietor of a food establishment, lodging establishment, or assisted living facility has been convicted of a violation of this chapter and for a period of ten days after the conviction fails to comply with any provision of this chapter, the department may cancel the proprietor's license.

23-09-23. Exemption for bed and breakfast facilities. This chapter does not apply to bed and breakfast facilities for which rules have been adopted under chapter 23-09.1.

23-09-24. Salvaged food - License required. It is unlawful for a person to claim to be a salvaged food distributor or to engage in the activity of selling, distributing, or otherwise trafficking in distressed or salvaged food, or both, at wholesale, without a license issued under this chapter authorizing that person to operate as a salvaged food distributor. A salvaged food distributor license may not be issued absent compliance with this section and any rules adopted to implement this section. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees under this section. License fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.