

DOMESTIC RELATIONS AND PERSONS

CHAPTER 150

H. B. No. 71
(Wagner)

MARRIAGE LICENSE APPLICATION

AN ACT

To amend and reenact section 14-03-17 of the North Dakota Century Code, relating to the examination of persons upon oath when making application for a marriage license.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 14-03-17 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-17. Application for License.) When application is made to any county judge of this state for a marriage license, he shall inquire of the applicant upon oath relative to the legality of the contemplated marriage. He may examine other witnesses upon oath. The facts relative to the legality of the marriage may be submitted to the county judge by affidavit. The county judge also shall require each applicant to submit the following facts upon blanks provided by the county:

1. An affidavit of some disinterested, credible person showing that the female is over the age of eighteen years and the male is over the age of twenty-one years. If the female is under the age of eighteen years or the male is under the age of twenty-one years, the county judge shall require the consent of the parents or guardian, if any, to be given personally, or by a certificate of consent signed by such parents or guardian under oath, and sworn to before a notary public or other officer qualified by law to administer oaths;
2. An affidavit showing whether or not either or both of the

parties have been divorced. If a decree of divorce has been granted to either or both of the parties a certified copy of the decree must be filed with the application. A license shall not be issued if it contravenes any provisions of the decree of divorce;

3. A certificate of a duly licensed physician other than the person seeking the license, showing that neither of the contracting parties is a person afflicted with any contagious venereal disease; and
4. An affidavit of a disinterested, credible person that the applicants are not habitual criminals.

All affidavits shall be subscribed and sworn to before a person authorized to administer oaths. The county judge shall retain on file in his office all papers and records pertaining to all marriage licenses. Anyone knowingly swearing falsely to the statements contained in any affidavit mentioned in this section shall be punished as provided in section 14-03-28.

Approved March 8, 1969.

CHAPTER 151

S. B. No. 359
(Ringsak, Nothing)

CHILD ABANDONMENT OR NONSUPPORT

AN ACT

To amend and reenact section 14-07-15 of the North Dakota Century Code, relating to the abandonment and nonsupport of a child.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 14-07-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-15. Abandonment or Nonsupport of Child.) Every parent or other person legally responsible for the care or support of a child who is under the age of eighteen years

and unable to support himself by lawful employment, who wholly abandons such child or willfully fails to furnish food, shelter, clothing, and medical attention reasonably necessary and sufficient to keep the child's life from danger and discomfort and his health from injury is guilty of a felony.

Any food, shelter, or clothing, or medical attentions, furnished by or through a welfare or charitable program of any governmental agency, civic or religious organization, or a combination thereof, or any intervening third party, on the basis of need, shall not avoid, excuse, relieve or discharge, either parent, or person legally responsible for care and support of a child, from the criminal penalty for the willful failure or neglect to provide such support.

Neither shall a parent be relieved, excused, or discharged from such responsibility and criminal penalty provided for herein, for the willful neglect or failure to provide such care and support, if the other parent is providing the child with care and support to the best of his or her ability, but where such care and support is not sufficient to keep the child's life from danger and discomfort, or its health from injury.

The fact, if it is a fact, that either parent may have secured a decree of divorce awarding the custody of such child, in no manner shall relieve either parent from the requirements and penalty of this section, except that compliance with the terms of such decree for support of such child shall be deemed a compliance herewith; provided, however, that if the parent or other person legally responsible for the care or support of a child who is under the age of eighteen years and unable to support himself, as hereinbefore provided, while in another state, and while such minor child is in this state, willfully and intentionally fails to furnish food, clothing, shelter, and medical attention as herein provided, such failure shall nevertheless be construed to have been committed in this state, and all of the laws of this state with reference to punishment shall apply with the same force and effect as if such abandonment and failure to support had occurred in this state.

Approved March 13, 1969.

CHAPTER 152

H. B. No. 94
(Dawson, Sanstead)

PETITION FOR ADOPTION

AN ACT

To provide the designation in a petition for adoption of the person to be adopted.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Designation of Person To Be Adopted—Previous Name Not To Be Disclosed in Petition, Notice of Hearing, or Decree of Adoption.) In addition to indicating the venue of the proceeding, the caption of a petition for adoption shall be styled "In the Matter of the Adoption of _____". The person to be adopted shall be designated in the caption under the name by which he is to be known if the petition is granted. If a child is placed for adoption by a licensed child-placing agency, any name by which the child was previously known shall not be disclosed in the petition, in the notice of hearing, or in the decree of adoption.

Approved March 25, 1969.

CHAPTER 153

H. B. No. 433
(Linderman)

UNIFORM RECIPROCAL ENFORCEMENT
OF SUPPORT ACT

AN ACT

To improve and extend by reciprocal legislation the enforcement of duties of support among the several states by the enactment of the Revised Uniform Reciprocal Enforcement of Support Act (1968) and to repeal chapter 14-12 of the North Dakota Century Code.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Part 1

General Provisions

Section 1. Purposes.) The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support.

Section 2. Definitions.)

1. "Court" means the district court of this state and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.
2. "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.
3. "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this Act.
4. "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

5. "Law" includes both common and statutory law.
6. "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.
7. "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.
8. "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.
9. "Register" means to file in the registry of foreign support orders.
10. "Registering court" means any court of this state in which a support order of a rendering state is registered.
11. "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.
12. "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.
13. "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.
14. "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

Section 3. Remedies Additional to Those Now Existing.)

The remedies herein provided are in addition to and not in substitution for any other remedies.

Section 4. Extent of Duties of Support.) Duties of support arising under the law of this state, when applicable under section 7, bind the obligor present in this state regardless of the presence of residence of the obligee.

Part 2**Criminal Enforcement**

Section 5. Interstate Rendition.) The governor of this state may

1. Demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or
2. Surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

Section 6. Conditions of Interstate Rendition.)

1. Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

2. If, under a substantially similar Act, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.
3. If proceedings have been initiated and the person demanded has prevailed therein the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

Part 3

Civil Enforcement

Section 7. Choice of Law.) Duties of support applicable under this Act are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

Section 8. Remedies of State or Political Subdivision Furnishing Support.) If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this Act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

Section 9. How Duties of Support Enforced.) All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

Section 10. Jurisdiction.) Jurisdiction of any proceeding under this Act is vested in the district court.

Section 11. Contents and Filing of Petition for Support—Venue.)

1. The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.
2. The petition may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

Section 12. Officials to Represent Oblige.) If this state is acting as an initiating state the prosecuting attorney upon the request of the court, the executive director of the North Dakota public welfare board, a county commissioner, or the director of a county welfare board, shall represent the obligee in any proceeding under this Act. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation.

Section 13. Petition for a Minor.) A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

Section 14. Duty of Initiating Court.) If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause three copies of the petition and its certificate and one copy of this Act

to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency, or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

Section 15. Costs and Fees.) An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or a county thereof. These costs or fees do not have priority over amounts due to the obligee.

Section 16. Jurisdiction by Arrest.) If the court of this state believes that the obligor may flee it may

1. As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or
2. As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

Section 17. State Information Agency.)

1. The North Dakota public welfare board is designated as the state information agency under this Act. It shall
 - a. Compile a list of the courts and their addresses in this state having jurisdiction under this Act and

transmit it to the state information agency of every other state which has adopted this or a substantially similar Act. Upon the adjournment of each session of the legislative assembly the agency shall distribute copies of any amendments to this Act and a statement of their effective date to all other state information agencies;

- b. Maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this Act; and
 - c. Forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the Act it receives from courts or information agencies of other states.
2. If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act as amended.
 3. After the deposit of three copies of the petition and certificate and one copy of the Act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the attorney general who may undertake the representation.

Section 18. Duty of the Court and Officials of This State as Responding State.)

1. After the responding court receives copies of the petition, certificate, and Act from the initiating court the clerk of

the court shall docket the case and notify the prosecuting attorney of his action.

2. The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.
3. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation.

Section 19. Further Duties of Court and Officials in the Responding State.)

1. The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.
2. If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state he shall so inform the court. Thereupon the clerk of court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court he shall forthwith notify the initiating court.
3. If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

Section 20. Hearing and Continuance.) If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

Section 21. Immunity from Criminal Prosecution.) If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

Section 22. Evidence of Husband and Wife.) Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

Section 23. Rules of Evidence.) In any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (section 27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by an interference by another obligee with rights of custody or visitation granted by a court.

Section 24. Order of Support.) If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this Act shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is im-

possible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

Section 25. Responding Court to Transmit Copies to Initiating Court.) The responding court shall cause a copy of all support orders to be sent to the initiating court.

Section 26. Additional Powers of Responding Court.) In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

1. Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;
2. Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and
3. Punish under the power of contempt the obligor who violates any order of the court.

Section 27. Paternity.) If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

Section 28. Additional Duties of Responding Court.) A responding court has the following duties which may be carried out through the clerk of the court:

1. To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

2. To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

Section 29. Additional Duty of Initiating Court.) An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of court.

Section 30. Proceedings Not To Be Stayed.) A responding court shall not stay the proceeding or refuse a hearing under this Act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention or jurisdiction for enforcement purposes by the court in the other action or proceeding.

Section 31. Application of Payments.) A support order made by a court of this state pursuant to this Act does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar Act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

Section 32. Effect of Participation in Proceeding.) Participation in any proceeding under this Act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

Section 33. Intrastate Application.) This Act applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed

finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

Section 34. Appeals.) If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may

1. Perfect an appeal to the proper appellate court if the support order was issued by a court of this state, or
2. If the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

Part 4

Registration of Foreign Support Orders

Section 35. Additional Remedies.) If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

Section 36. Registration.) The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

Section 37. Registry of Foreign Support Orders.) The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

Section 38. Official to Represent Obligee.) If this state is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court, the executive director of the North Dakota public welfare board, a county commissioner, or the district of a county welfare board shall represent the obligee in proceedings under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation.

Section 39. Registration Procedure—Notice.)

1. An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court (a) three certified copies of the order with all modifications thereof, (b) one copy of the Reciprocal Enforcement of Support Act of the state in which the order was made, and (c) a statement verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this Act.
2. Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

Section 40. Effect of Registration—Enforcement Procedure.)

1. Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.
2. The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

3. At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

Section 41. Uniformity of Interpretation.) This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 42. Short Title.) This Act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

Section 43. Severability.) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 44. Repeal.) Chapter 14-12 of the North Dakota Century Code is hereby repealed.

Approved March 14, 1969.

CHAPTER 154

H. B. No. 321
(Bullis, Kelsch)

UNIFORM CHILD CUSTODY JURISDICTION

AN ACT

To provide for the modification by the courts of this state, under specified circumstances, of child custody determinations and decrees made by the courts of other states, to prescribe the procedure therefor and the effect thereof, to provide for the recognition and enforcement of out-of-state custody decrees, to provide for hearings and studies in other states, and to provide for the rendition of assistance to the courts of other states, and constituting the Uniform Child Custody Jurisdiction Act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Purposes of Act—Construction of Provisions.)

1. The general purposes of this Act are to:
 - a. Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
 - b. Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
 - c. Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;
 - d. Discourage continuing controversies over child custody in the interest of greater stability of home

environment and of secure family relationships for the child;

- e. Deter abductions and other unilateral removals of children undertaken to obtain custody awards;
 - f. Avoid re-litigation of custody decisions of other states in this state insofar as feasible;
 - g. Facilitate the enforcement of custody decrees of other states;
 - h. Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and
 - i. Make uniform the law of those states which enact it.
2. This Act shall be construed to promote the general purposes stated in this section.

Section 2. Definitions.) As used in this Act:

1. "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;
2. "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;
3. "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect, dependency, and deprivation proceedings;
4. "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and modification decree;
5. "Home state" means the state in which the child im-

mediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period;

6. "Initial decree" means the first custody decree concerning a particular child;
7. "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;
8. "Physical custody" means actual possession and control of a child;
9. "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and
10. "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Section 3. Jurisdiction.)

1. A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial decree or modification decree if:
 - a. This state (1) is the home state of the child at the time of commencement of the proceeding, or (2) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;
 - b. It is in the best interest of the child that a court of

this state assume jurisdiction because (1) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (2) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

- c. The child is physically present in this state and (1) the child has been abandoned or (2) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected, dependent, or deprived; or
 - d. (1) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with subdivisions a, b, or c of this subsection, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (2) it is in the best interest of the child that this court assume jurisdiction.
2. Except under subdivisions c and d of subsection 1, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.
 3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

Section 4. Notice and Opportunity To Be Heard.) Before making a decree under this Act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to section 5.

Section 5. Notice to Persons Outside the State—Submission to Jurisdiction.)

1. Notice required for the exercise of jurisdiction over a

person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

- a. By personal delivery outside this state in the manner prescribed for service of process within this state;
 - b. In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;
 - c. By any form of mail addressed to the person to be served and requesting a receipt; or
 - d. As directed by the court, including publication, if other means of notification are ineffective.
2. Notice under this section shall be served, mailed, delivered, or last published at least twenty days before any hearing in this state.
 3. Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.
 4. Notice is not required if a person submits to the jurisdiction of the court.

Section 6. Simultaneous Proceedings in Other States.)

1. A court of this state shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.
2. Before hearing the petition in a custody proceeding, the

court shall examine the pleadings and other information supplied by the parties under section 9 and shall consult the child custody registry established under section 16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

3. If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issues may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 19 through 22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the most appropriate forum.

Section 7. Inconvenient Forum.)

1. A court which has jurisdiction under this Act to make an initial decree or a modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.
2. A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or of a guardian ad litem or other representative of the child.
3. In determining whether it is an inconvenient forum, the court shall consider whether it is in the interest of the child that another state assume jurisdiction.

For this purpose it may take into account the following factors, among others, whether:

- a. Another state is or recently was the child's home state;
 - b. Another state has a closer connection with the child and his family or with the child and one or more of the contestants;
 - c. Substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
 - d. The parties have agreed on another forum which is no less appropriate; and
 - e. The exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 1.
4. Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.
 5. If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may (1) dismiss the proceedings, or (2) stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.
 6. The court may decline to exercise its jurisdiction under this Act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

7. If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.
8. Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.
9. Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

Section 8. Jurisdiction Declined by Reason of Conduct.)

1. If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.
2. Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.
3. In appropriate cases a court dismissing a petition under

this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

Section 9. Information Under Oath To Be Submitted To The Court.)

1. Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether he:
 - a. Has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;
 - b. Has information of any custody proceeding concerning the child pending in a court of this or any other state; and
 - c. Knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.
2. If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.
3. Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

Section 10. Additional Parties.) If the court learns from information furnished by the parties pursuant to section 9 or from other sources that a person not a party to the custody pro-

ceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with section 5.

Section 11. Appearance of Parties and the Child.)

1. The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.
2. If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under section 5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.
3. If a party to the proceeding who is outside this state is directed to appear under subsection 2 or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

Section 12. Binding Force and Res Judicata Effect of Custody Decree.) A custody decree rendered by a court of this state which had jurisdiction under section 3 binds all parties who have been served in this state or notified in accordance with section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

Section 13. Recognition of Out-Of-State Custody Decrees.) The courts of this state shall recognize and enforce an initial decree or modification decree of a court of another state which

had assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of this Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.

Section 14. Modification of Custody Decree of Another State.)

1. If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (a) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify the decree and (b) the court of this state has jurisdiction.
2. If a court of this state is authorized under subsection 1 and section 8 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 22.

Section 15. Filing and Enforcement of Custody Decree of Another State.)

1. A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court or family court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court or family court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.
2. A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or his witnesses.

Section 16. Registry of Out-Of-State Custody Decrees and Proceedings.) The clerk of each district court or family court

shall maintain a registry in which he shall enter the following:

1. Certified copies of custody decrees of other states received for filing;
2. Communications as to the pendency of custody proceedings in other states;
3. Communications concerning a finding of inconvenient forum by a court of another state; and
4. Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

Section 17. Certified Copies of Custody Decrees.) The clerk of the district court or family court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

Section 18. Taking Testimony in Another State.) In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

Section 19. Hearings and Studies in Another State—Orders to Appear.)

1. A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services

may be assessed against the parties or, if necessary, ordered paid by the county of the residence of the child for public assistance purposes.

2. A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

Section 20. Assistance to Courts of Other States.)

1. Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.
2. A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.
3. Upon request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

Section 21. Preservation of Documents for Use in Other States.) In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child becomes an adult. Upon appropriate request of the court of another state the court shall forward

to the other court certified copies of any or all of such documents.

Section 22. Request for Court Records of Another State.) If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 21.

Section 23. International Application.) The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

Section 24. Priority.) Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this Act, the case shall be given calendar priority and handled expeditiously.

Section 25. Severability.) If any provision of this Act or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 26. Short Title.) This Act may be cited as the Uniform Child Custody Jurisdiction Act.

Approved March 26, 1969.