

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2167

Introduced by

Senators W. Stenehjem, C. Nelson

Representatives Kretschmar, Mahoney, Stenehjem

1 A BILL for an Act to create and enact section 14-09-06.6 of the North Dakota Century Code,
2 relating to motions for postjudgment custody modification.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Section 14-09-06.6 of the North Dakota Century Code is created and
5 enacted as follows:

6 **14-09-06.6. Limitations on postjudgment custody modifications.**

- 7 1. Unless agreed to in writing by the parties, no motion to modify a custody order may
8 be made earlier than two years after the date of entry of an order establishing
9 custody, except in accordance with subsection 3.
- 10 2. Unless agreed to in writing by the parties, if a motion for modification has been
11 disposed of upon its merits, no subsequent motion may be filed within two years of
12 disposition of the prior motion, except in accordance with subsection 3.
- 13 3. The time limitation in subsections 1 and 2 does not apply if the court finds:
14 a. The persistent and willful denial or interference with visitation;
15 b. The child's present environment may endanger the child's physical or
16 emotional health or impair the child's emotional development; or
17 c. The primary physical care of the child has changed to the other parent for
18 longer than six months.
- 19 4. A party seeking modification of a custody order shall serve and file moving papers
20 and supporting affidavits and shall give notice to the other party to the proceeding
21 who may serve and file a response and opposing affidavits. The court shall
22 consider the motion on briefs and without oral argument or evidentiary hearing and
23 shall deny the motion unless the court finds the moving party has established a

1 prima facie case justifying a modification. If a prima facie case is established, the
2 court shall set a date for an evidentiary hearing.

3 5. The court may not modify a prior custody order within the two-year period following
4 the date of entry of an order establishing custody unless the court finds the
5 modification is necessary to serve the best interest of the child and:

- 6 a. The persistent and willful denial or interference with visitation;
7 b. The child's present environment may endanger the child's physical or
8 emotional health or impair the child's emotional development; or
9 c. The primary physical care of the child has changed to the other parent for
10 longer than six months.

11 6. The court may modify a prior custody order after the two-year period following the
12 date of entry of an order establishing custody if the court finds:

- 13 a. On the basis of facts that have arisen since the prior order or which were
14 unknown to the court at the time of the prior order, a material change has
15 occurred in the circumstances of the child or the parties; and
16 b. The modification is necessary to serve the best interest of the child.

17 7. The court may modify a prior custody order at any time if the court finds a
18 stipulated agreement by the parties to modify the custody is in the best interest of
19 the child.

20 8. Upon a motion to modify custody under this section, the burden of proof is on the
21 moving party.