FIRST ENGROSSMENT

Fifty-seventh Legislative Assembly of North Dakota

ENGROSSED SENATE BILL NO. 2046

Introduced by

Legislative Council

(Judiciary Committee)

- 1 A BILL for an Act to create and enact a new section to chapter 12.1-18 and five new sections to
- 2 chapter 14-05 of the North Dakota Century Code, relating to the removal of children from the
- 3 state, to decrees of separation, and the duty to support children; to amend and reenact sections
- 4 14-04-04, 14-05-03, 14-05-08, 14-05-10, 14-05-17, 14-05-23, 14-05-25.1, and 14-09-08 of the
- 5 North Dakota Century Code, relating to decrees of separation and divorce; to repeal sections
- 6 14-05-11 and 14-05-12 and chapter 14-06 of the North Dakota Century Code, relating to
- 7 separation from bed and board and grounds for divorce; to provide a penalty; and to declare an
- 8 emergency.

9

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- SECTION 1. A new section to chapter 12.1-18 of the North Dakota Century Code is created and enacted as follows:
- 12 **Removal of child from state in violation of custody decree Penalty.** Any person
- who intentionally removes, causes the removal of, or detains the person's own child under the
- 14 age of eighteen years outside this state with the intent to deny another person's rights under an
- 15 existing custody decree is guilty of a class C felony. Detaining the child outside this state in
- 16 violation of the custody decree for more than seventy-two hours is prima facie evidence that the
- 17 person charged intended to violate the custody decree at the time of removal.
- 18 **SECTION 2. AMENDMENT.** Section 14-04-04 of the North Dakota Century Code is
- 19 amended and reenacted as follows:
- 20 **14-04-04.** Custody of children. The court shall award the custody of the children of a
- 21 marriage annulled on the ground of fraud or force to the innocent parent and also may provide
- 22 for their education and maintenance out of the property of the guilty a party based upon the
- 23 best interests and welfare of the child criteria set forth in chapter 14-09.

- SECTION 3. A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:
- Grounds for separation. The court may grant a temporary or permanent decree of separation for any cause for which a divorce may be decreed.
- 5 **SECTION 4. AMENDMENT.** Section 14-05-03 of the North Dakota Century Code is 6 amended and reenacted as follows:
 - **14-05-03.** Causes for divorce. Divorces may be granted for any of the following causes:
- 9 1. Adultery.

7

8

- 10 2. Extreme cruelty.
- 11 3. Willful desertion.
- 12 4. Willful neglect.
- 13 5. Habitual intemperance. Abuse of alcohol or controlled substances.
- 14 6. Conviction of felony.
- 7. 15 Insanity for a period of five years, the insane person having been an inmate of an 16 institution for such period, and affected with any psychosis. No divorce may be 17 granted because of insanity until after a thorough examination of such insane 18 person by three physicians who are recognized authorities on mental diseases, 19 one of which physicians must be the superintendent of the state hospital for the 20 mentally ill, or the chief medical officer of a veterans administration hospital or 21 government institution within or without the state of North Dakota, the other two 22 physicians to be appointed by the court before whom the action is pending, all of 23 whom must agree that such insane person is incurable. No divorce may be 24 granted to any person whose husband or wife is an inmate of an institution, except 25 a United States government hospital or institution, in any other than the state of 26 North Dakota, unless the person applying for such divorce has been a resident of 27 the state of North Dakota for at least five years.
- 28 8. Irreconcilable differences.
- 29 **SECTION 5. AMENDMENT.** Section 14-05-08 of the North Dakota Century Code is 30 amended and reenacted as follows:

1	14-05-08. Habitual intemperance Abuse of alcohol or controlled substances
2	defined. Habitual intemperance Abuse of alcohol or controlled substances is that degree of
3	intemperance from the use of intoxicating drinks, morphine, opium, chloral, cocaine, or other
4	like narcotic drugs, which disqualifies the person a great portion of the time from properly
5	attending to business, or which reasonably would inflict a course of great mental anguish upon
6	the innocent party. For purposes of this chapter, "controlled substance" means a substance as
7	defined in section 19-03.1-01.
8	SECTION 6. AMENDMENT. Section 14-05-10 of the North Dakota Century Code is
9	amended and reenacted as follows:
10	14-05-10. Denial of divorce. Divorces must be denied upon showing:
11	1. Connivance;
12	2. Collusion;
13	3. Condonation; or
14	4. 2. Limitation and lapse of time.
15	SECTION 7. AMENDMENT. Section 14-05-17 of the North Dakota Century Code is
16	amended and reenacted as follows:
17	14-05-17. Residence requirements. A <u>separation or</u> divorce may not be granted
18	unless the plaintiff in good faith has been a resident of the state for six months next preceding
19	commencement of the action. If the plaintiff has not been a resident of this state for the six
20	months preceding commencement of the action, a <u>separation or</u> divorce may be granted if the
21	plaintiff in good faith has been a resident of this state for the six months immediately preceding
22	entry of the decree of <u>separation or</u> divorce.
23	SECTION 8. Three new sections to chapter 14-05 of the North Dakota Century Code
24	are created and enacted as follows:
25	Separation - Spousal support - Division of property. Upon the granting of a
26	separation, the court may include in the decree an order requiring a party to pay for spousal
27	support and for the support of any minor children of the parties. Subject to section 14-05-24,
28	the decree may also provide for the equitable division of the property and debts of the parties.
29	Decree of separation - Effect. The decree of separation confers upon the parties all
30	the rights of property, business, and contracts as if unmarried and releases both parties from all
31	obligations of maintenance, except as may be required by the decree.

1	Revocation of decree of separation - Divorce granted. At any time after a decree
2	for separation has been granted, the court may revoke the decree based upon any regulations
3	or restrictions the court imposed in the decree. Application for revocation may be made by
4	either party to the decree. The party making the application for revocation shall provide to the
5	other party to the decree at least ten days' and not more than twenty days' notice of the
6	application. Service must be made in the same manner as service of a summons in a civil
7	action. If it appears to the court at the hearing of the application that reconciliation between the
8	parties to the marriage is improbable, the court shall revoke the separation decree and, in lieu
9	of that decree, shall render a decree divorcing the parties. If the court has not previously done
10	so, the court shall provide for the equitable division of the property, shall make orders with
11	respect to any minor children, and may provide for the payment of support to either party by the
12	other.
13	SECTION 9. AMENDMENT. Section 14-05-23 of the North Dakota Century Code is
14	amended and reenacted as follows:
15	14-05-23. Temporary support, attorney fees, and custody. During any time in
16	which an action for separation or divorce is pending, the court, upon application of a party, may
17	issue an order requiring a party to pay such support as may be necessary for the support of a
18	party and minor children of the parties and for the payment of attorney fees. The court in the
19	order may award custody of minor children to a party. The order may be issued and served in
20	accordance with the North Dakota Rules of Court. The court may include in the order a
21	provision for domestic violence protection provided the party has submitted a verified
22	application for the order which is sufficient to meet the criteria defined in subsection 2 of section
23	14-07.1-01. A violation of the protection provision of the order is subject to the penalties
24	established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.
25	SECTION 10. A new section to chapter 14-05 of the North Dakota Century Code is
26	created and enacted as follows:
27	Spousal support. Taking into consideration the circumstances of the parties, the court
28	may require one party to pay spousal support to the other party for any period of time. The
29	court may modify its spousal support orders.
30	SECTION 11. AMENDMENT. Section 14-05-25.1 of the North Dakota Century Code is
31	amended and reenacted as follows:

1 14-05-25.1. Money judgment to secure division of property enforceable by 2 contempt proceedings - Exemptions from process not available. Failure to comply with the provisions of a separation or divorce decree relating to distribution of the property of the 3 parties constitutes contempt of court. A party may also execute on a money judgment, and the 4 5 obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02. 6 SECTION 12. AMENDMENT. Section 14-09-08 of the North Dakota Century Code is amended and reenacted as follows: 7 8 **14-09-08.** Mutual duty to support children. Parents shall give their children support 9 and education suitable to the child's circumstances. The court may compel either or both of the 10 parents to provide for the support of their children. 11 **SECTION 13. REPEAL.** Sections 14-05-11 and 14-05-12 and chapter 14-06 of the North Dakota Century Code are repealed. 12 13 **SECTION 14. EMERGENCY.** Section 1 of this Act is declared to be an emergency 14 measure.