

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:**

10 **SECTION 1.** A new section to chapter 12.1-18 of the North Dakota Century Code is  
11 created and enacted as follows:

12 **Removal of child from state in violation of custody decree - Penalty.** Any person  
13 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 in  
15 violation of an existing custody decree is guilty of a class C felony. Detaining the child outside  
16 this state in violation of the custody decree for more than seventy-two hours is prima facie  
17 evidence that the 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.

1           **SECTION 3.** A new section to chapter 14-05 of the North Dakota Century Code is  
2 created and enacted as follows:

3           **Grounds for separation.** The court may grant a temporary or permanent decree of  
4 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:

7           **14-05-03. Causes for divorce.** Divorces may be granted for any of the following  
8 causes:

- 9           1.    Adultery.
- 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.
- 15          7.   ~~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 separation or 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 separation or 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 separation or 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  
3   the provisions of a separation or divorce decree relating to distribution of the property of the  
4   parties constitutes contempt of court. A party may also execute on a money judgment, and the  
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  
7   amended and reenacted as follows:

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  
12 North Dakota Century Code are repealed.

13          **SECTION 14. EMERGENCY.** Section 1 of this Act is declared to be an emergency  
14 measure.