

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSMENT HOUSE BILL NO. 1271

Introduced by

Representatives DeKrey, Kretschmar

Senator Wanzek

1 A BILL for an Act to amend and reenact sections 14-05-24 and 14-05-27 of the North Dakota
2 Century Code, relating to property division in divorce and separation.

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

4 **SECTION 1. AMENDMENT.** Section 14-05-24 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **14-05-24. Division of property.**

7 1. When a divorce is granted, the court shall make an equitable distribution of the
8 marital property and marital debts of the parties.

9 2. The court may redistribute property in a postjudgment proceeding if a party has
10 failed to disclose property and debts as required by rules adopted by the supreme
11 court or the party fails to comply with the terms of a court order distributing
12 property and debts.

13 3. As used in this section:

14 a. "Marital property" and "marital debt" means property, including vested public
15 or private pension plan benefits or rights, or debt jointly or individually
16 acquired by the parties to a divorce or legal separation proceeding at any time
17 during the existence of the marriage relation between them. All property and
18 debt acquired by either party subsequent to the marriage is presumed to be
19 marital property or marital debt regardless of whether title is held individually
20 or by the spouses in a form of coownership such as joint tenancy, tenancy in
21 common, tenancy by the entirety, or community property or whether the debt
22 is in the name of one party or not the other. Each spouse is deemed to have
23 a common ownership in marital property which vests not later than the time of
24 the entry of the judgment in a proceeding for divorce. The extent of the

1 vested interest must be determined and made final by the court. If a title
2 interest in real property is held individually by only one spouse, the interest in
3 the real property of the nontitled spouse is not subject to claims of creditors or
4 judgment or tax liens until the time of entry of the judgment awarding an
5 interest to the nontitled spouse. The presumption of marital property or
6 marital debt is overcome by a showing that the property or debt is nonmarital
7 property or debt.

8 b. "Nonmarital property" or "nonmarital debt" means property or debt acquired
9 by either spouse before, during, or after the existence of their marriage which
10 is:

- 11 (1) Acquired as a gift, a bequest, a devise, or an inheritance made by a
12 third party to one but not to the other spouse;
13 (2) Acquired before the marriage;
14 (3) Excluded by a valid antenuptial contract; or
15 (4) Acquired in exchange for, or is the increase in value of, property or debt
16 that is described in paragraph 1, 2, or 3.

17 4. If the court finds that either spouse's resources or property, including the spouse's
18 portion of the marital property, is so inadequate as to work an unfair hardship,
19 considering all relevant circumstances, in addition to the marital property, the court
20 may apportion up to one-half of the property otherwise excluded under paragraph
21 1, 2, or 4 of subdivision b of subsection 3, to prevent the unfair hardship. If the
22 court apportions property other than marital property, the court shall make findings
23 in support of the apportionment. The findings must be based on all relevant
24 factors, including the length of the marriage; any prior marriage of a party; and the
25 age, health, station, occupation, amount and sources of income, vocational skills,
26 employability, estate, liabilities, needs, and opportunity for future acquisition of
27 capital assets and income of each party.

28 **SECTION 2. AMENDMENT.** Section 14-05-27 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **14-05-27. Separation - Spousal support - Division of property.** Upon the granting
31 of a separation, the court may include in the decree an order requiring a party to pay for

- 1 spousal support and for the support of any minor children of the parties. Subject to section
- 2 14-05-24, the decree may also provide for the equitable division of the marital property and
- 3 marital debts of the parties.