FIRST ENGROSSMENT

Sixty-eighth Legislative Assembly of North Dakota

ENGROSSED HOUSE BILL NO. 1362

Introduced by

Representatives Christensen, Bosch, Heilman, Kasper, Koppelman, Lefor, Meier, M. Ruby Senators Boehm, Larsen, Paulson, Wobbema

- 1 A BILL for an Act to create and enact a new section to chapter 14-09 of the North Dakota
- 2 Century Code, relating to recognizing a parent's interest in their child's upbringing.

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

- 4 **SECTION 1.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:
- 6 Parent's interest in child's upbringing.
- 7 1. As used in this section:
- 8 <u>a. "Parent" means parent or legal guardian not including a school or other institution</u>
 9 serving in loco parentis; and
- b. "Stakeholder" means a person that has a vested interest in the success of the
 organization or system.
- 2. a. A parent possesses a fundamental liberty interest to raise the parent's child
 without undue government interference in the care, custody, and management of
 the parent's child and, at all times, retains a vital interest in preventing the
 irretrievable destruction of family life.
- 16 <u>b.</u> <u>It is in the best interest and welfare of a child to be raised under the care and </u>
- 17 <u>supervision of the child's parents.</u>
- 18 c. A child's need for a permanent home and for positive, nurturing family
 19 relationships usually is best met by the child's parents.
- d. The integrity of the family unit and the right of a parent to conceive, raise,
 manage, train, educate, and reasonably discipline the parent's child should be
- 22 <u>constitutionally protected.</u>

1		<u>e.</u>	<u>I he</u>	tundamental liberty interest of a parent is recognized, protected, and does
2			<u>not</u>	cease to exist because the parent's child is placed in the temporary custody
3			of th	ne state.
4		<u>f.</u>	<u>A fu</u>	ndamentally fair process must be provided to a parent if the state moves to
5			<u>cha</u>	llenge or interfere with parental rights.
6			<u>(1)</u>	A government entity must support any actions or allegations made in
7				opposition to the rights and desires of a parent regarding the parent's child
8				by sufficient evidence to satisfy a parent's constitutional entitlement to
9				heightened protection against government interference with the parent's
10				fundamental rights and liberty interests and the right of the child to be
11				reared by the child's parent.
12			<u>(2)</u>	Before adjudication of unfitness, government action in relation to a parent
13				and the parent's child may not exceed the least restrictive means of
14				alternatives available to accomplish a compelling state interest.
15			<u>(3)</u>	Until the state proves parental unfitness, and the child suffers, or is
16				substantially likely to suffer, serious detriment as a result, the child and the
17				child's parent share a vital interest in preventing erroneous termination of
18				their relationship and the state may not presume a child and the child's
19				parent are adversaries.
20	<u>3.</u>	<u>lf a</u>	If a parent's fundamental rights protected by this section are violated, a parent may	
21		<u>ass</u>	ert th	at violation as a claim or defense in a judicial proceeding and may obtain
22		<u>app</u>	ropria	ate relief against a governmental entity. The prevailing party in an action filed
23		und	ler thi	s section is entitled to reasonable attorney's fees and costs.
24	<u>4.</u>	<u>It is</u>	the p	public policy of the state that:
25		<u>a.</u>	<u>A pa</u>	arent retains the fundamental right and duty to exercise primary control over
26			the	care, supervision, upbringing, and education of the parent's child;
27		<u>b.</u>	A ch	nild has the right to protection from abuse and neglect; and
28		<u>C.</u>	<u>The</u>	state retains a compelling interest in investigating, prosecuting, and
29			pun	ishing abuse and neglect.

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- 1 <u>5.</u> The state's education systems are supportive and secondary to the primary role of a
- 2 parent. The legislative assembly is the primary stakeholder in the establishment,
- 3 <u>maintenance, and success of the state's education systems.</u>