

DOMESTIC RELATIONS AND PERSONS

CHAPTER 141

HOUSE BILL NO. 1579
(Representatives Boehm, Belter, Kerzman)
(Senators O. Hanson, Kelsh, Marks)

ABORTION INFORMED CONSENT

AN ACT to create and enact two new subsections to section 14-02.1-02 and three new sections to chapter 14-02.1 of the North Dakota Century Code, relating to requirement of informed consent for abortions and civil damages for performance of abortions without informed consent; and to amend and reenact subsection 5 of section 14-02.1-02 and subsection 1 of section 14-02.1-03 of the North Dakota Century Code, relating to informed consent for abortions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

5. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed ~~only after full disclosure to her by the physician who is to perform the abortion of as much of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:~~
 - a. ~~According to the best judgment of her attending physician, she is pregnant.~~
 - b. ~~The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or based upon a history and physical examination and appropriate laboratory tests.~~
 - c. ~~The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.~~
 - d. ~~The immediate and long-term physical dangers of abortion, psychological trauma resulting from abortion, sterility and increases in the incidence of premature births, tubal pregnancies and stillbirths in subsequent pregnancies, as compared to the dangers in carrying the pregnancy to term.~~
 - e. ~~The particular risks associated with her own pregnancy and the abortion technique to be performed.~~
 - f. ~~Alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance and encouragement to carry her child to term including, if the~~

woman so requests; a list of the agencies and the services available from each.

- g. In cases where the fetus may reasonably be expected to have reached viability and thus be capable of surviving outside of her womb, the attending physician shall inform the woman of the extent to which he is legally obligated to preserve the life and health of her viable unborn child during and after the abortion.

In addition, the physician may inform the woman of any other material facts or opinions or provide any explanation of the above information which, in the exercise of his best medical judgment, is reasonably necessary to allow the woman to give her informed consent to the proposed abortion, with full knowledge of its nature and consequences.

Informed consent shall be evidenced by a written statement, in the form prescribed by the state department of health and consolidated laboratories and approved by the attorney general, signed by the physician and the woman upon whom the abortion is to be performed, in which statement the physician certifies that he has made the full disclosure provided above, and in which statement the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

Informed consent shall not be required in the event of a medical emergency when the woman is incapable of giving her consent if a licensed physician certifies the abortion is necessary to prevent her death, provided that:

- a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:

- (1) The name of the physician who will perform the abortion;
- (2) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
- (3) The probable gestational age of the unborn child at the time the abortion is to be performed; and
- (4) The medical risks associated with carrying her child to term.

- b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:

- (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

- (2) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
 - (3) That she has the right to review the printed materials described in section 3 of this Act. The physician or the physician's agent shall orally inform the woman the materials have been provided by the state of North Dakota and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials, copies of them must be furnished to her. The physician and the physician's agent may disassociate themselves from the materials and may comment or refrain from comment on them, as they choose.
- c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her, and that she has been informed of her opportunity to review the information referred to in paragraph 3 of subdivision b.
 - d. Prior to the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.

SECTION 2. Two new subsections to section 14-02.1-02 of the North Dakota Century Code are created and enacted as follows:

"Medical emergency" means that condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four hour delay will create grave peril of immediate and irreversible loss of major bodily function.

"Probable gestational age of the unborn child" means what, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

SECTION 3. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Printed information.

- 1. The state department of health and consolidated laboratories shall cause to be published in English, and in every other language that the department determines is the primary language of a significant number of state residents, within one hundred eighty days after this Act becomes law, the following easily comprehensible printed materials:
 - a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must

include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials including a toll-free, twenty-four hour a day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.

- b. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

2. The materials required under this section must be available at no cost from the state department of health and consolidated laboratories upon request and in appropriate number to any person, facility, or hospital.

SECTION 4. AMENDMENT. Subsection 1 of section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. No physician shall perform an abortion unless prior to such performance the physician certified in writing that the woman gave her informed consent fully and without coercion; after the attending physician had informed the woman of the information contained in section 14-02.1-02 not more than thirty days nor less than forty-eight hours prior to her consent to the abortion as defined and provided in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Prior to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion shall be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours prior to the minor's consent to the performance of abortion or unless the attending physician certifies in writing that he has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last known addresses at least forty-eight hours prior to the minor's consent to the performance of abortion. When a parent of the minor has died or rights and interests of such parent have been legally terminated, this subsection shall apply to the sole remaining parent. When both parents have died or where the rights and interests of both parents have been legally terminated, this subsection shall apply to the guardian or other person standing in loco parentis. Notification by the attending physician is not required if the minor elects not to allow the notification of one or both parents or her guardian and the abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1. None of the requirements of this subsection apply in the case of a medical emergency, except that

when a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or for which a twenty-four hour delay will create grave peril of immediate and irreversible loss of major bodily function, and shall certify those indications in writing.

SECTION 5. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Civil damages for performance of abortions without informed consent. Any person upon whom an abortion has been performed without informed consent as required by this Act may maintain an action against the person who performed the abortion for ten thousand dollars in punitive damages and treble whatever actual damages the plaintiff may have sustained. Any person upon whom an abortion has been attempted without complying with this Act may maintain an action against the person who attempted to perform the abortion for five thousand dollars in punitive damages and treble whatever actual damages the plaintiff may have sustained.

SECTION 6. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Privacy of woman upon whom an abortion is performed or attempted. In every proceeding or action brought under section 5 of this Act, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted should be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public disclosure. Each such order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

Approved April 1, 1991
Filed April 2, 1991

CHAPTER 142

SENATE BILL NO. 2498
(Senators Kelly, Mushik, Ingstad)
(Representatives Dorso, Martinson, DeMers)

EMPLOYMENT DISCRIMINATION

AN ACT to amend and reenact section 14-02.4-01, subsection 3 of section 14-02.4-02, sections 14-02.4-03, 14-02.4-06, 14-02.4-08, 14-02.4-09, 14-02.4-18, and 34-14-02 of the North Dakota Century Code, relating to discriminatory employment practices and direct deposit of wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-01. State policy against discrimination. It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, ~~or~~ status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination, or coerce others to discriminate.

SECTION 2. AMENDMENT. Subsection 3 of section 14-02.4-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental handicap, ~~or~~ status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, housing accommodations, property rights, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining

employment, public accommodations or public services, education, or housing;

- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

SECTION 3. AMENDMENT. Section 14-02.4-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-03. Employer's discriminatory practices. It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental handicap, ~~or status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.~~ It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap or because of that person's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least twenty-seven thousand dollars.

SECTION 4. AMENDMENT. Section 14-02.4-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-06. Certain employment advertising deemed discriminatory. It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance, or who participate in lawful activity off the employer's premises during nonworking hours are unwelcome, objectionable, not acceptable, or not solicited.

SECTION 5. AMENDMENT. Section 14-02.4-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-08. Qualification based on religion, sex, national origin, physical or mental handicap, or marital status. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental handicap, or marital status in those circumstances where religion, sex, national origin, physical or mental handicap, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, or to discharge an individual from a position on the basis of that individual's participation in a lawful activity that is off the employer's premises and that takes place during nonworking hours if that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer.

SECTION 6. AMENDMENT. Section 14-02.4-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; or for an employer to give and to act upon the results of any professionally developed ability test; provided, that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

SECTION 7. Section 14-02.4-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-18. Concealing, aiding, compelling, or inducing unlawful discrimination - Threats or reprisals. It is a discriminatory practice for a person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of a device whatever to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with

respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.

SECTION 8. AMENDMENT. Section 34-14-02 of the North Dakota Century Code is amended and reenacted as follows:

34-14-02. Semimonthly or agreed payday - Direct deposit. Every employer shall pay all wages due to his employees at least twice each calendar month, or on regular agreed paydays designated in advance by the employer, in lawful money of the United States or with checks on banks convenient to the place of employment. If an employee participates in a direct deposit program, that employee's employer shall deposit the employee's wages into the financial institution of the employee's choice.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 143

HOUSE BILL NO. 1127
(Committee on Industry, Business and Labor)
(At the request of the Labor Commissioner)

EMPLOYMENT DISCRIMINATION

AN ACT to amend and reenact subsections 1, 4, and 5 of section 14-02.4-02 of the North Dakota Century Code, relating to the application of age and other employment discrimination restrictions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 4, and 5 of section 14-02.4-02 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means ~~over the age of at least forty and under the years of age of seventy.~~
4. "Employee" means a person who performs services for an employer, who employs ~~ten~~ one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.
5. "Employer" means a person within the state who employs ~~ten~~ one or more ~~full-time~~ employees for more than one quarter of the year, and a person wherever situated who employs ~~ten~~ one or more employees whose services are to be partially or wholly performed in the state.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 144

HOUSE BILL NO. 1472
(Clayburgh)

DISCRIMINATING EMPLOYMENT PRACTICE COMPLAINTS

AN ACT to amend and reenact sections 14-02.4-19 and 14-02.4-21 of the North Dakota Century Code, relating to claims of discriminatory employment practices adjudicated by the department of labor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-19. Actions - Limitations. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to such practice are maintained and administered, or in the judicial district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three years of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to an employer's discriminatory practice may bring a complaint of discriminating employment practices under this chapter to the department of labor within three hundred days of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to housing or public accommodations or services may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, or in the judicial district in which the person would have obtained housing or public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.

SECTION 2. AMENDMENT. Section 14-02.4-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Optional mediation by department of labor - Relief - Appeals. The department of labor may receive complaints of discriminating employment practices under this chapter and shall have sixty days to negotiate settlements to the extent acceptable to the parties involved. If the commissioner of labor or the commissioner's representative determines the claim of discriminating employment practices is valid, the commissioner may prohibit the employer from engaging in the discriminating employment practice and order appropriate relief such as an injunction, equitable relief, or backpay. Earnings or potential earned income by the employee who was the object of the discrimination will reduce the backpay granted. A party may appeal a decision of the commissioner to the district court in the district in which the complaining employee was employed at the time of the alleged discriminatory practice. This chapter does not prohibit or require a person to file a complaint with the department of labor with regard to alleged discriminating employment practices before using the provisions of this chapter.

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 145

HOUSE BILL NO. 1073
(Representative Schimke)
(Senator Moore)

MARRIAGE LICENSES

AN ACT to amend and reenact sections 14-03-10 and 14-03-19 of the North Dakota Century Code, relating to requirements for the issuance of marriage licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-10 of the North Dakota Century Code is amended and reenacted as follows:

14-03-10. Marriage may not be solemnized without license — ~~Residence required.~~ No person shall solemnize any marriage until the parties ~~thereto shall to the marriage~~ produce a license regularly issued not more than sixty days prior to the date of ~~such the~~ marriage by ~~the~~ a county judge of the county in which either of the contracting parties or the parents of either of the parties resides or ~~is temporarily domiciled~~, or if such county is unorganized, or ~~disorganized~~, of the county to which it is attached for judicial purposes, or ~~if the contracting parties are residents of another state by the~~ a county judge of the county wherein the marriage is to be solemnized according to the terms of section 14-03-19. For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota shall be deemed to reside in the county wherein ~~he~~ that person is stationed.

SECTION 2. AMENDMENT. Section 14-03-19 of the North Dakota Century Code is amended and reenacted as follows:

14-03-19. License issued to all who comply with law. If a county judge is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, ~~or in the case where both of the contracting parties are residents of another state, if such parties present a valid marriage license regularly issued not more than sixty days prior thereto by the duly authorized officials of their state,~~ then the county judge shall issue and sign a marriage license in duplicate and affix ~~his~~ the judge's seal to both the original and the duplicate.

Approved April 10, 1991
Filed April 10, 1991

CHAPTER 146

SENATE BILL NO. 2340
(Senator Dotzenrod)
(Representative Huether)

MARRIAGE LICENSE APPLICATIONS

AN ACT to amend and reenact section 14-03-17 of the North Dakota Century Code, relating to the requirements for a marriage license application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-17. Application for license. When application is made to any county judge of this state for a marriage license, ~~he~~ the judge shall inquire of the applicant upon oath relative to the legality of the contemplated marriage. ~~He~~ The judge may examine other witnesses upon oath. The facts relative to the legality of the marriage may be submitted to the county judge by affidavit. The county judge also shall require each applicant to submit the following facts upon blanks provided by the county, together with documentary evidence of age:

1. An affidavit ~~of some disinterested, credible person~~ by each of the applicants showing that ~~the female and male~~ each is over the age of eighteen years. In addition, each applicant shall exhibit to the county judge a birth certificate or other satisfactory evidence of age. If the female or the male either applicant is under the age of eighteen years, the county judge shall require the consent of the parents or guardian, if any, to be given personally, or by a certificate of consent signed by parents or guardian under oath; and sworn to before a notary public or other officer qualified by law to administer oaths the written consent under oath of:
 - a. Either parent of the minor applicant, if the parents are living together; or
 - b. The parent having the legal custody of the minor applicant, if the parents are not living together; or
 - c. The surviving parent, if one of the parents of the minor applicant is deceased; or
 - d. The guardian, or person under whose care and government the minor applicant is, if both parents of the minor applicant are deceased, or if a person other than a parent has legal and actual custody of the minor applicant.

2. An affidavit showing whether or not either or both of the parties have been divorced. If a decree of divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the application; and if either or both parties are subject to a subsisting order to provide child support or alimony combined with child support pursuant to the provisions of a divorce decree or judgment, the county judge shall cause a copy of the application for license to be filed in such prior divorce action and shall secure from the applicants a signed acknowledgment of any provision for child support or alimony combined with child support contained in such prior divorce decree or judgment. A license shall not be issued if it contravenes any provisions of the decree of divorce.

- 3- An affidavit of a disinterested, credible person that the applicants are not habitual criminals.

All affidavits shall be subscribed and sworn to before a person authorized to administer oaths. The county judge shall retain on file in his the judge's office all papers and records pertaining to all marriage licenses. Anyone knowingly swearing falsely to the statements contained in any affidavit mentioned in this section shall be punished as provided in section 14-03-28.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 147

SENATE BILL NO. 2274
(Stenehjem)

RESIDENCY FOR DIVORCE

AN ACT to amend and reenact sections 14-05-17 and 14-06-06 of the North Dakota Century Code, relating to residency requirements for the granting of divorce and separation decrees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-05-17. Residence requirements. A divorce may not be granted unless the plaintiff in good faith has been a resident of the state for six months next preceding ~~the~~ commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a divorce may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of divorce.

SECTION 2. AMENDMENT. Section 14-06-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-06-06. Residence requirements. A decree of separation may not be granted unless the plaintiff in good faith has been a resident of this state for six months next preceding ~~the~~ commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a decree of separation may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of separation.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 148

SENATE BILL NO. 2355
(Senators Yockim, Mathern, Lindgren)
(Representatives Rydell, Clayburgh, Scherber)

EVIDENCE IN CUSTODY DECISIONS

AN ACT to amend and reenact subsection 3 of section 14-05-22 and subdivision j of subsection 1 of section 14-09-06.2 of the North Dakota Century Code, relating to the consideration of evidence of domestic violence by courts in determining rights to custody and visitation of children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 14-05-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence ~~and, if~~. If the court finds credible evidence that domestic violence has occurred, this evidence shall create the rebuttable presumption that awarding custody or granting visitation to the abusive party is not in the best interests of the child. The court shall furthermore give direction for the custody of children of the marriage and grant rights of visitation in a manner that best protects the children and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this section, "domestic violence" means domestic violence as defined in section 14-07.1-01. The court also shall consider the interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent, and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

SECTION 2. AMENDMENT. Subdivision j of subsection 1 of section 14-09-06.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- j. The existence of domestic violence. If the court finds that domestic violence has occurred, the court shall provide for a custody arrangement that cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 149

SENATE BILL NO. 2447
(Senators Mushik, Stenehjem)
(Representatives Carlson, Gates)

DOMESTIC VIOLENCE PROCEDURES

AN ACT to amend and reenact subsection 2 of section 14-07.1-01, section 14-07.1-02, subsection 2 of section 14-07.1-03, and subsection 2 of section 14-07.1-10 of the North Dakota Century Code, relating to definitions, issuance of domestic violence protection orders, and arrest procedures in situations involving domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 14-07.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Domestic violence" includes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, not committed in self-defense, on the complaining family or household members.

SECTION 2. AMENDMENT. Section 14-07.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court or county court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:

- a. Restraining any party from threatening, molesting, ~~or~~ injuring, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.
6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
- ~~6-~~ 7. No order or agreement under this section affects title to any real property in any matter.

SECTION 3. AMENDMENT. Subsection 2 of section 14-07.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An ex parte temporary protection order may include:
 - a. Restraining any party from having contact with ~~or~~ committing acts of domestic violence on another person.
 - b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of

another person, or from a domestic violence shelter care facility.

- c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

SECTION 4. AMENDMENT. Subsection 2 of section 14-07.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately, including the comparative severity of injuries involved, to determine whether to seek an arrest warrant.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 150

SENATE BILL NO. 2270
(Stenehjem, Maxson)

RESIDENCE OF CHILD AFTER DIVORCE

AN ACT to amend and reenact section 14-09-07 of the North Dakota Century Code, relating to an exemption to the requirement of a court order to change the residence of a child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-07 of the North Dakota Century Code is amended and reenacted as follows:

14-09-07. Residence of child. A parent entitled to the custody of a child ~~shall~~ may not change the residence of the child to another state except upon order of the court or with the consent of the noncustodial parent, ~~where~~ if the noncustodial parent has been given visitation rights by the decree; ~~however, a.~~ A court order ~~shall~~ is not ~~be~~ required if the noncustodial parent (1) has not exercised ~~such~~ visitation rights for a period of one year or (2) has moved to another state and is more than fifty miles from the residence of the custodial parent.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 151

SENATE BILL NO. 2269
(Stenehjem)

CHILD SUPPORT AFFIDAVIT SERVICE

AN ACT to amend and reenact section 14-09-08.2 of the North Dakota Century Code, relating to support for children after majority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-08.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.2. ~~Modification of support~~ Support for children after majority.

1. In the absence of a written agreement to the contrary entered into after July 1, 1989, a judgment or order requiring the payment of child support until the child attains majority ~~is deemed to be modified to continue~~ continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
 - a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
 - b. The child resides with the person to whom the duty of support is owed.
2. The person to whom the duty of support is owed shall file an affidavit with the district court stating that the child has been continuously enrolled in high school and is, or will be, eighteen years of age prior to the date the child is expected to be graduated. The clerk of court shall serve the affidavit ~~must be served by the person to whom the duty of support is owed by first-class mail~~ upon the person owing the duty of support. Upon the filing of the affidavit, the judgment or order is deemed modified the child support continues pursuant to subsection 1, unless the person owing the duty of support files a motion with the court, within twenty days subsequent to service of the affidavit, requesting a hearing on the need to modify the judgment or order before the district court.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 152

SENATE BILL NO. 2203
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

CHILD SUPPORT OBLIGATIONS

AN ACT to create and enact three new sections to chapter 14-09 of the North Dakota Century Code, relating to representation in child support matters; to amend and reenact sections 14-09-08.4, 14-09-09.12, 14-09-09.13, 14-09-09.16, 14-09-09.17, 14-09-09.24, subsection 3 of section 14-09-09.25, section 14-12.1-12, subsection 3 of section 14-12.1-18, sections 14-12.1-24, 14-12.1-27, and 14-12.1-38 of the North Dakota Century Code, and section 16 of chapter 148 of the 1989 Session Laws of North Dakota, relating to the establishment and enforcement of child support obligations; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16 of chapter 148 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

Periodic review of child support orders.

1. The public authority shall establish standards to determine that a child support order being enforced by the child support agency should be reviewed. If required to do so in order to secure approval by federal officials charged with administration of title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq., as amended], the public authority shall make those standards a part of a plan indicating how and when child support orders are to be periodically reviewed and adjusted.
2. If the child support agency determines, at the request of the obligor or the obligee, or on its own motion, that, pursuant to the standards described in subsection 1, a child support order being enforced by the child support agency should be reviewed, the child support agency shall initiate a review of such order. The child support agency may seek an amendment of the order if the order is inconsistent with the amount that would be required by child support guidelines established under subsection 1 of section 14-09-09.7 and, if the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by child support those guidelines established under subsection 1 of section 14-09-09.7, shall seek an amendment of the order. The
3. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment,

the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.

4. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances.

SECTION 2. AMENDMENT. Section 14-09-08.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.4. Periodic review of child support orders.

1. Each child support order must be reviewed by the child support agency ~~not~~ no less frequently than thirty-six months after the establishment of the order or the most recent review of the order unless:
 - a. In the case of an order with respect to which there is in effect an assignment under sections 50-09-06 or 50-09-06.1, subsection 2 of section 50-24.1-02, or section 50-24.1-02.1, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
 - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by the child support those guidelines established under subsection 1 of section 14-09-09.7, the child support agency shall seek an amendment to of the order. ~~The~~
3. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application

of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.

4. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances.

SECTION 3. AMENDMENT. Section 14-09-09.12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.12. Provision of notice of impact of income withholding law to obligors. Each judgment or order issued by a court in this state which includes an order for support of minor children, but which does not require immediate income withholding, must include a statement that a delinquency in payment of the support due or the approved request of the obligee will result in an income withholding order being issued in accordance with this chapter.

SECTION 4. AMENDMENT. Section 14-09-09.13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.13. Procedure - Notice to obligor. If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, or if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the clerk of court shall serve a notice and a copy of this chapter on the obligor by first-class mail at the obligor's last known address. The notice must be sent within five working days of the appropriate date under subsection 7 if the obligor's address is known to the clerk on that date or, if the address is unknown on that date, within five working days after the clerk is informed of the obligor's address. The notice must state:

1. That the obligor is delinquent in the payment of child support or, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income payor from the obligor's income in each month and that the amount is the sum of both of the following:
 - a. The obligor's current monthly support obligation.
 - b. The amount the obligor is ordered to pay toward any outstanding arrearage, or if no order to repay an arrearage exists, then an

amount equal to twenty percent of the obligor's current monthly support obligation, if any, or equal to the most recent monthly support obligation if there is no current monthly support obligation, for application towards any arrearage subject to the limitations of section 14-09-09.16.

4. That the income payor may withhold an additional sum of three dollars to cover the income payor's expenses.
5. That if not contested pursuant to section 14-09-09.14, the income withholding order will be issued immediately, without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.
7. The date the income of the obligor is subject to income withholding, which is the earliest of:
 - a. The date the obligor requests income withholding.
 - b. The date on which an approved income withholding request is made by the obligee.
 - c. The date the child support obligation becomes delinquent.

SECTION 5. AMENDMENT. Section 14-09-09.16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.16. Service of income withholding order on income payor. The clerk of court shall serve the income withholding order and a copy of this chapter on the income payor in the manner provided for service of a summons in a civil action and upon the obligor by first-class mail to the obligor's last known address, within fifteen days of the date of the notice made pursuant to section 14-09-09.13 or 14-09-09.20, unless the obligor has contested that notice within ten days of the date of that notice. If a hearing was held under section 14-09-09.14 or 14-09-09.21, the income withholding order and the copy of this chapter must be served within fifteen five working days of the date of the court's determination. The income withholding order must be sent no later than forty five days following the notice given pursuant to section 14-09-09.13 or 14-09-09.20. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order and a copy of this chapter must be served on any known income payor within five working days of the issuance of the judgment or order which requires the payment of child support. Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order and a copy of this chapter must be served on any subsequently identified income payor within five working days after the clerk is informed of the name and address of such an income payor. An income withholding order may also be issued and served at the request of the obligor. The income withholding order shall state all of the following:

1. That the obligor is delinquent in the payment of support or a request for withholding has been made by the obligee and approved by the child support agency, as the case may be, properly subject

to an income withholding order and that the income payor is therefore required to withhold a stated sum an amount, determined under subsection 3 of section 14-09-09.13, from the obligor's income at the time the obligor is paid for transmittal to the clerk of court within ten working days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.

2. That the income payor may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
3. That the amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.
4. That the income payor shall begin withholding no later than the first pay period that occurs fourteen days after service of the income withholding order.
5. That if the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the clerk of court that portion thereof which the obligee's claim bears to the combined total of all claims.
6. That the income payor shall notify the clerk of court in writing of the termination of a duty to pay income to the obligor within fifteen days of such termination. Such notification must include the name and address of the obligor's subsequent income payor, if known.
7. That if the income payor is subject to income withholding orders for more than one obligor, the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same clerk of court with identification of the amount attributable to each obligor.
8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14-09-09.3.
9. That the withholding order has priority over any other legal process under state law against the same wages.
10. If appropriate, that the obligor is required to provide health insurance coverage for a child who is the subject of a child support order.

SECTION 6. AMENDMENT. Section 14-09-09.17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.17. Amendment - Termination of income withholding order. Upon amendment or termination of an income withholding order, the clerk of court shall send appropriate notice to the income payor. An income withholding order is to be amended by the clerk when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order ~~is to may~~ be terminated only when the:

1. The duty to support ceases and all child support arrearages have been paid; or
2. In the case of an order imposed under section 14-09-09.24, the obligor requests termination, withholding has not been terminated previously and subsequently initiated, and the obligor meets the conditions for an alternative arrangement for assuring the regular payment of child support required by subsection 4 of section 14-09-09.24.

SECTION 7. AMENDMENT. Section 14-09-09.24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.24. Immediate income withholding.

1. Except as provided in subsection 2, each judgment or order which requires the payment of child support, issued or modified on or after January 1, 1990, subjects the income of the obligor to income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1, demonstrates, and the court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the court need not subject the income of the obligor to immediate withholding.
3. A finding that there is good cause not to require immediate income withholding must be based on at least:
 - a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
 - b. Proof of timely payment of previously ordered support; and
 - c. Requirement that the obligor keep the clerk informed of the name and address of each of the obligor's current and future income payors and of any employment-related health insurance to which the obligor has access.
4. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:

- a. Provides that the obligor shall keep the clerk informed of the name and address of each of the obligor's current and future income payors and of any employment-related health insurance to which the obligor has access.
- b. Describes the provisions by which regular payment of child support is assured; and
- c. Is reviewed and approved by the court and entered into the court's records.

SECTION 8. AMENDMENT. Subsection 3 of section 14-09-09.25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Upon application of an obligee requesting income withholding, the child support agency shall promptly approve or disapprove the request. The child support agency may not approve the obligee's request in a case where the court has determined that there is good cause not to require immediate income withholding unless the court first changes its determination. Each approved request must be transmitted promptly to the clerk of court.

SECTION 9. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

State is real party in interest. The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted under section 14-09-08.9 or 14-09-08.13.
3. Whenever a support order of another state is received with the documentation required by subsection 2 of section 14-09-09.19.
4. Whenever duties are imposed on the state or its public officials under chapter 14-12.1.

SECTION 10. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Attorney represents people's interest in the enforcement of child support obligations. In any action brought to establish paternity, secure repayment of governmental benefits paid, secure current or future support of children, or establish, enforce, or modify a child support obligation, the public authority or a child support agency may employ or contract with a licensed attorney. An attorney so employed or contracted represents the interest of the people of the state of North Dakota in the enforcement of child support obligations. Nothing in this section may be construed to modify confidentiality required of the public authority or a child support agency. Representation by the employed or contracted attorney may not be

construed to create an attorney-client relationship between the attorney and any party or witness to the action, other than the people of the state of North Dakota, regardless of the name in which the action is brought.

SECTION 11. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Application to existing cases. Sections 9, 10, 12, 13, and 16 of this Act apply to actions filed prior to the effective date of this Act.

SECTION 12. AMENDMENT. Section 14-12.1-12 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-12. Officials to represent obligee people of the state of North Dakota. If this state is acting as an initiating state, the prosecuting attorney upon the request of the court, the executive director of the department of human services, a county commissioner, or the director of a county social service board, shall represent the obligee people of the state of North Dakota, and the people's interest in the enforcement of child support obligations, in any proceeding under this chapter. If the prosecuting attorney neglects or refuses to represent the obligee people, the attorney general may undertake the representation.

SECTION 13. AMENDMENT. Subsection 3 of section 14-12.1-18 of the North Dakota Century Code is amended and reenacted as follows:

3. If the prosecuting attorney neglects or refuses to represent the obligee people, the attorney general may undertake the representation.

SECTION 14. AMENDMENT. Section 14-12.1-24 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-24. Order of support. If the responding court finds a duty of support it may shall order the obligor to furnish support or reimbursement therefor in accordance with the present needs and circumstances of the obligee and the present ability of the obligor to pay provisions of section 14-09-09.7 and may subject the property of the obligor to the order. The court, upon a finding of a material change in of circumstances relative to the obligor's discharge of obligations under any existing order for child support or decree of divorce, may modify the order for child support or alimony combined with child support, and order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1 or chapter 50-09 or 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that

proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

SECTION 15. AMENDMENT. Section 14-12.1-27 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-27. Paternity. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may shall adjourn the hearing until the paternity issue has been adjudicated under chapter 14-17.

SECTION 16. AMENDMENT. Section 14-12.1-38 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-38. Official to represent obligee people of the state of North Dakota. If this state is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court, the executive director of the department of human services, a county commissioner, or the director of a county social service board shall represent the obligee people of the state of North Dakota, and the people's interest in the enforcement of child support obligations, in proceedings under this part. If the prosecuting attorney neglects or refuses to represent the obligee people, the attorney general may undertake the representation.

SECTION 17. CONTINGENT EFFECTIVE DATE. Section 6 of this Act becomes effective upon adoption, as a final regulation, of the provisions of 45 CFR 303.100(a)(7)(ii), proposed for adoption in a notice of proposed rulemaking published in the Federal Register on Wednesday, August 15, 1990, at 55 F.R. 33426, but otherwise does not become effective; provided, however, that section 6 of this Act will in no event become effective before August 1, 1991.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 153

HOUSE BILL NO. 1475
(Representatives Pyle, Kretschmar, Rydell)
(Senators Satrom, Marks)

ADOPTION RECORD DISCLOSURE

AN ACT to amend and reenact section 14-15-16 of the North Dakota Century Code, relating to disclosure of adoption records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-15-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-15-16. Hearings and records in adoption proceedings - Confidential nature - Disclosure of identifying and nonidentifying information - Retroactive operation. Notwithstanding any other law concerning public hearings and records:

1. All hearings held in proceedings under this chapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.
2. All papers, records, and information pertaining to the adoption whether part of the permanent record of the court or of a file in the department of human services or in an agency are confidential and may be disclosed only in accordance with this section.
3. Nonidentifying information, if known, concerning undisclosed genetic parents shall be furnished to:
 - a. The adoptive parents at the time of adoptive placement or upon their request.
 - b. An adopted adult upon written request.

In addition, the clerk of the appropriate district court, upon request and payment of the proper fee, shall furnish a certified copy of the decree of adoption to the adoptive parents, the guardian of an adopted minor child, or an adopted adult, provided the decree does not disclose the identity of the genetic parents or the name of the adopted person prior to the adoption proceedings.

4. At the discretion of the child-placing agency, with due regard for confidentiality and upon the consent of all the parties involved, exchanges may take place between the genetic parents, adoptive parents, and adopted child as follows:

- a. At the time the child is placed for adoption, the genetic parents and the adoptive parents may meet, in person, without disclosing their names.
 - b. The genetic parents and the adoptive parents may exchange correspondence through the child-placing agency.
 - c. The child-placing agency may inform the genetic parents of the death of the child they placed for adoption.
 - d. The child-placing agency may inform the adopted adult, or the adoptive parents of a minor of the death of a genetic parent.
 - e. The child-placing agency may inform the genetic parents of pertinent medical information concerning the adopted child or adult.
 - f. The child-placing agency may inform the adopted adult or the adoptive parents of a minor of pertinent medical information concerning the genetic parents.
5. An adopted person who is eighteen years of age or over may request the department of human services to secure and disclose information identifying the adopted child's genetic parents or to secure and disclose nonidentifying information not on file with the board or a child-placing agency. Similarly, a genetic parent may request the same information about the child that parent placed for adoption who is twenty-one years or older. The department of human services shall, within five working days of receipt of the request, notify in writing the child-placing agency having access to the information requested of the request by the adopted ~~child~~ person or the genetic parent. If there has not been established a presumed or adjudicated father under chapter 14-17 then a "genetic parent" includes for the purposes of a request to secure and disclose nonidentifying information not on file with the department or child-placing agency, the alleged father as indicated in the files of the child-placing agency; provided, that there exists in the file information which corroborates the allegation of paternity, including the existence of communications between the alleged father and child-placing agency, or between the alleged father and the natural or adjudicated mother or members of her family, or such other corroborative information permitted by rules adopted by the department of human services.
- 5- 6. Within three months after receiving notice of the request of the adopted person or genetic parent, the child-placing agency shall make complete and reasonable efforts to notify the genetic parents of the adopted ~~child~~ person or to notify the person placed for adoption by the genetic parents. The child-placing agency may charge a reasonable fee to the adopted ~~child~~ person or the genetic parent for the cost of making a search pursuant to this subsection. All communications under this subsection are confidential. For purposes of this subsection, "notify" means a personal and confidential contact with the genetic parents of the adopted ~~child~~ person or with the person placed for adoption by the genetic parents; the personal and confidential contact shall not be by mail and shall be by an employee or agent of the licensed child-placing

agency which processed the pertinent adoption, or some other licensed child-placing agency designated by the child-placing agency; the personal and confidential contact shall be evidenced by filing with the department of human services an affidavit of notification executed by the person who notified each genetic parent or the adopted person and certifying that each genetic parent or the adopted person was given the following information:

- a. The nature of the identifying information to which the agency has access.
- b. The nature of any nonidentifying information requested.
- c. The date of the request of the adopted ~~child~~ person or genetic parent.
- d. The right of the genetic parent or the adopted person to file, within sixty days of receipt of the notice, an affidavit with the department of human services stating that the identifying information as it relates to the person filing the affidavit should not be disclosed.
- e. The right of the genetic parent or the adopted person to file a consent to disclosure with the department of human services at any time.
- f. The effect of a failure of the genetic parent or the adopted person to file either a consent to disclosure or an affidavit stating that the identifying information should not be disclosed.

~~6- 7.~~ If the child-placing agency certifies to the department of human services that it has been unable to notify the genetic parent or the adopted person within three months, the identifying information shall not be disclosed to the adopted ~~child~~ person or the genetic parent. If the child-placing agency certifies to the department of human services that the agency has been able to locate only one genetic parent who consents to disclosure and the other genetic parent cannot be located, the identifying information must be disclosed to the adopted person. The information disclosed by the agency or by the consenting parent may relate only to that consenting parent. If ~~either~~ a genetic parent or the adopted person has at any time filed with the department of human services an unrevoked affidavit stating that the identifying information should not be disclosed, the department of human services shall not disclose the information identifying that genetic parent or adopted person to the adopted ~~child~~ person or that genetic parent until the affidavit is revoked by the filing of a consent to disclosure by that parent or the adopted person.

~~7- 8.~~ If, within three months, the child-placing agency certifies to the department of human services that it has notified the genetic parents or the adopted person pursuant to subsection 5 6, the department of human services shall receive the identifying information from the child-placing agency and disclose the information sixty-one days after the date of the latest notice to either genetic parent or to the adopted person. This disclosure

will occur if, at any time during the sixty-one days, the genetic parent or the adopted person has filed an affidavit with the department of human services stating that the information shall be disclosed and the affidavit has not been revoked by the subsequent filing by the genetic parent or adopted person of an affidavit that the information shall not be disclosed.

- ~~8-~~ 9. If the genetic parent or the adopted person has died and has not filed an unrevoked affidavit with the department of human services stating that identifying information shall not be disclosed, the information shall be forwarded to and released by the department of human services to the adopted ~~child~~ person or the genetic parent. If the genetic parent or the adopted person has died, and at any time prior to his death the genetic parent or adopted person has filed an unrevoked affidavit with the department of human services stating that the identifying information shall not be disclosed, the adopted ~~child~~ person or the genetic parent may petition the court of original jurisdiction of the adoption proceeding for an order for release of the identifying information. The court shall grant the petition if, after consideration of the interests of all known persons involved, the court determines that disclosure of the information would be of greater benefit than nondisclosure.
- 9- 10. Any adopted person eighteen or more years of age or over whose adoption was finalized in this state or whose genetic parents had their parental rights terminated in this state may request the department of human services to secure and disclose identifying information concerning an adult sibling in the same manner as provided for in subsection 4 5. An adult sibling may request the same information about a sibling who was placed for adoption who is twenty-one years of age or over. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the department of human services or in an agency, may be released only upon written consent of the adult sibling and any living genetic parents of the adult sibling if the adult sibling knows of their identity.
- ~~10-~~ 11. Upon application to the department of human services by an adult adopted person or the parent or guardian of a minor adopted child, the department may investigate or cause to be investigated facts necessary to determine the adopted person's eligibility for enrollment as a member of an Indian tribe.
- a. The department of human services may inquire of any person or agency, including a licensed child-placing agency in North Dakota to assist in the investigation.
 - b. All identifying information obtained by the department of human services shall remain confidential.
 - c. The bureau of Indian affairs may be provided sufficient information obtained from the investigation to determine the eligibility of the adopted person for enrollment in an Indian tribe. Prior to the department's release of information to the bureau of Indian affairs, the department will obtain written assurance from the bureau of Indian affairs that the

information provided will remain confidential, and will not be furnished to any unauthorized person or agency.

- d. The procedure used in contacting the genetic parents of the adopted child shall be a personal and confidential contact. Any necessary contact shall be made by an employee or agent of a licensed child-placing agency or the department of human services. The information requested of the genetic parents shall be limited to that information necessary to make a determination of the adopted person's eligibility for enrollment in an Indian tribe.
 - e. The department of human services may charge a reasonable investigation fee.
- ~~11-~~ 12. No person may be required to disclose the name or identity of either an adoptive parent or an adopted ~~child~~ person except:
- a. In accordance with this section;
 - b. As authorized in writing by the adoptive parent or the adopted ~~child~~ person;
 - c. Upon order of the court for good cause shown in exceptional cases.
- ~~12-~~ 13. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after July 1, 1979.
- ~~13-~~ 14. Any child-placing agency discharging in good faith its responsibilities under this section is immune from any liability, civil or criminal, that otherwise might result.
- ~~14-~~ 15. The department of human services shall make such reasonable rules and regulations as are necessary to carry out the purposes of this section.

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