

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 140

SENATE BILL NO. 2367

(Senators Maxson, W. Stenehjem, Holmberg)

(Representatives Maragos, Porter, Kaldor)

### EMPLOYMENT DISCRIMINATION

AN ACT to amend and reenact sections 14-02.4-01, 14-02.4-03, 14-02.4-06, and 14-02.4-08 of the North Dakota Century Code, relating to discriminatory practices in employment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-02.4-01 of 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, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; 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.** Section 14-02.4-03 of 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, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer. 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~~ forty-four thousand dollars.

**SECTION 3. AMENDMENT.** Section 14-02.4-06 of 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 which activity is not in direct conflict with the essential business-related interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.

**SECTION 4. AMENDMENT.** Section 14-02.4-08 of 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 and which is not in direct conflict with the essential business-related interests of the employer, 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.

Approved April 20, 1993  
Filed April 20, 1993

## CHAPTER 141

SENATE BILL NO. 2286  
(Senators Lindgren, Heinrich)  
(Representative Oban)

### MARRIAGE OF SEVERELY RETARDED

AN ACT to repeal section 14-03-07 of the North Dakota Century Code, relating to prohibited marriages of persons institutionalized as severely retarded.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. REPEAL.** Section 14-03-07 of the North Dakota Century Code is repealed.

Approved March 24, 1993  
Filed March 25, 1993

## CHAPTER 142

HOUSE BILL NO. 1105  
(Political Subdivisions Committee)  
(At the request of the Supreme Court)

### CLERK OF DISTRICT COURT

AN ACT to amend and reenact sections 14-03-09, 16.1-15-08, 16.1-15-09, 16.1-15-11, 16.1-15-13, and 16.1-16-07 of the North Dakota Century Code, relating to the authority of clerks of district court to solemnize marriages and the duties of clerks of district court to preserve election ballots; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-03-09 of the North Dakota Century Code is amended and reenacted as follows:

**14-03-09. Who may solemnize marriages.** Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by ~~magistrates appointed and assigned under section 27-07.1-07~~ clerks of district court, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to chapters 10-24 through 10-28.

**SECTION 2. AMENDMENT.** Section 14-03-09 of the North Dakota Century Code, as amended by section 43 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

**14-03-09. Who may solemnize marriages.** Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by ~~magistrates appointed by the presiding judge of the judicial district~~ clerks of district court, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to chapters 10-24 through 10-28.

**SECTION 3. AMENDMENT.** Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-08. Wrapping and returning of ballots to county judge or magistrate clerk of district court.** After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers must then be folded tightly together and the wrapper must be pasted or glued securely at the outer end to

completely envelop and hold the ballots together. Ballots ~~which that~~ are void must be wrapped in a separate wrapper and must be marked "void". Ballots ~~which that~~ are spoiled must be separately wrapped and marked "spoiled". In folding and sealing ballots, the various classes of ballots must be kept separate. The judges shall fold all ballots counted by them, except those ~~which that~~ are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned either in person or by mail to the county judge or to the ~~magistrate for the county appointed and assigned under section 27-07.1-07~~ clerk of district court. Ballots used with any electronic voting system or counted by an electronic counting machine must be wrapped, sealed, and returned as provided in this section.

**SECTION 4. AMENDMENT.** Section 16.1-15-08 of the North Dakota Century Code, as amended by section 54 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

**1 16.1-15-08. Wrapping and returning of ballots to district judge or** ~~magistrate~~ clerk of district court. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers must then be folded tightly together and the wrapper must be pasted or glued securely at the outer end to completely envelop and hold the ballots together. Ballots ~~which that~~ are void must be wrapped in a separate wrapper and must be marked "void". Ballots ~~which that~~ are spoiled must be separately wrapped and marked "spoiled". In folding and sealing ballots, the various classes of ballots must be kept separate. The judges shall fold all ballots counted by them, except those ~~which that~~ are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned either in person or by mail to a district judge serving the county or to a ~~magistrate appointed by the presiding judge of the judicial district~~ the clerk of district court. Ballots used with any electronic voting system or counted by an electronic counting machine must be wrapped, sealed, and returned as provided in this section.

**SECTION 5. AMENDMENT.** Section 16.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>1</sup> NOTE: Section 16.1-15-08 was also amended by section 21 of Senate Bill No. 2361, chapter 201.

**16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns.** Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots must have tabulating equipment ~~which~~ that has an element ~~which~~ that generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element ~~which~~ that generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records must be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number ~~which~~ that must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the county judge or to the ~~magistrate for the county appointed and assigned under section 27-07.1-07 clerk of district court.~~

**SECTION 6. AMENDMENT.** Section 16.1-15-09 of the North Dakota Century Code, as amended by section 55 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

**16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns.** Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots shall have tabulating equipment ~~which~~ that has an element ~~which~~ that generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element ~~which~~ that generates a printed

record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records must be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number ~~which that~~ must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the district judge or to ~~a magistrate appointed by the presiding judge of the judicial district~~ the clerk of district court.

**SECTION 7. AMENDMENT.** Section 16.1-15-11 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-11. Locking and examination of voting machines - Tally of voting machine votes - Certification to county judge or ~~magistrate clerk of district court~~.** Voting machines must remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine must be made by the inspector and the election judges at the time votes are tallied. This record must agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate or measure. The record must then be certified by the inspector and the election judges, and one copy must be delivered to the county judge or to the ~~magistrate of the county appointed and assigned under section 27-07-1-07 clerk of district court~~ at the same time as the ballots are delivered to him the judge or clerk pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

**SECTION 8. AMENDMENT.** Section 16.1-15-11 of the North Dakota Century Code, as amended by section 56 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

**16.1-15-11. Locking and examination of voting machines - Tally of voting machine votes - Certification to district judge or ~~magistrate clerk of district court~~.** Voting machines must remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine must be made by the inspector and the election judges at the time votes are tallied. This record shall agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate or measure. The record shall then be certified by the inspector and the election judges, and one copy shall be delivered to the district judge or to ~~a magistrate appointed by the presiding judge of the judicial district~~ the clerk of district court at the same time as the ballots are

delivered to him the judge or clerk pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

**SECTION 9. AMENDMENT.** Section 16.1-15-13 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-13. County judge or magistrate clerk of district court to keep ballots forty-five days - Exception - Use of ballots as evidence.** Immediately upon receiving the ballots as provided in section 16.1-15-08, the county judge or the magistrate clerk of district court shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes which that must be securely locked. The boxes must be placed in a fireproof vault and must be kept securely for forty-five days. They may not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the county judge or the magistrate clerk of district court that no contest is pending, the ballots must be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots may not be destroyed until the contest or prosecution is finally determined. The ballots returned to the county judge or the magistrate clerk of district court as provided in this section must be received in evidence without introducing further foundation.

**SECTION 10. AMENDMENT.** Section 16.1-15-13 of the North Dakota Century Code, as amended by section 57 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

**16.1-15-13. District judge or magistrate clerk of district court to keep ballots forty-five days - Exception - Use of ballots as evidence.** Immediately upon receiving the ballots as provided in section 16.1-15-08, the district judge or the magistrate clerk of district court shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes which that shall be securely locked. The boxes must be placed in a fireproof vault and must be kept securely for forty-five days. They may not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the district judge or the magistrate clerk of district court that no contest is pending, the ballots must be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots may not be destroyed until the contest or prosecution is finally determined. The ballots returned to the district judge or ~~a magistrate clerk of district court~~ as provided in this section must be received in evidence without introducing further foundation.

**SECTION 11. AMENDMENT.** Section 16.1-16-07 of the North Dakota Century Code is amended and reenacted as follows:



**16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots.** Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the county judge or to the ~~magistrate for the county appointed and assigned under section 27-07.1-07~~ clerk of district court of any county where ~~he the contestant or contestee~~ desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the county judge or the ~~magistrate clerk of district court~~ clerk of district court to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

**SECTION 12. AMENDMENT.** Section 16.1-16-07 of the North Dakota Century Code, as amended by section 58 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

**16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots.** Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the district judge or to a ~~magistrate appointed by the presiding judge of the judicial district~~ the clerk of district court of any county where the contestant or the contestee desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the district judge or the ~~magistrate clerk of district court~~ clerk of district court to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

**SECTION 13. EFFECTIVE DATE.** When sections 43, 54, 55, 56, 57, and 58 of chapter 326 of the 1991 Session Laws of North Dakota become effective, sections 2, 4, 6, 8, 10, and 12 of this Act become effective on January 2, 1995.

**SECTION 14. EXPIRATION DATE.** When sections 43, 54, 55, 56, 57, and 58 of chapter 326 of the 1991 Session Laws of North Dakota become effective, sections 1, 3, 5, 7, 9, and 11 of this Act are effective through January 1, 1995, and after that date are ineffective.

Approved March 22, 1993  
Filed March 23, 1993

## CHAPTER 143

HOUSE BILL NO. 1306  
(Representatives J. Berg, Brodshaug, Gulleson, Wentz)  
(Senators Evanson, Scherber)

### MARRIAGE SURNAME NOTICE

AN ACT to amend and reenact sections 14-03-17 and 14-03-20 of the North Dakota Century Code, relating to names on marriage licenses and certificates.

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

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

##### **14-03-17. Application for license.**

1. When application is made to any county judge of this state for a marriage license, the judge shall inquire of the applicant upon oath relative to the legality of the contemplated marriage. 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-~~ a. An affidavit by each of the applicants showing that 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 either applicant is under the age of eighteen years, the county judge shall require the written consent under oath of:
    - ~~a-~~ (1) Either parent of the minor applicant, if the parents are living together;
    - ~~b-~~ (2) The parent having the legal custody of the minor applicant, if the parents are not living together;
    - ~~c-~~ (3) The surviving parent, if one of the parents of the minor applicant is deceased; or
    - ~~d-~~ (4) 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-~~ b. 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. A license shall not be issued if it contravenes any provisions of the decree of divorce.

2. All affidavits shall be subscribed and sworn to before a person authorized to administer oaths. The county judge shall retain on file in 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.
3. Each application for a marriage license must also contain a statement to the following effect:

#### NOTICE TO APPLICANTS

- a. Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.
- b. A person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname. Parties to a marriage need not have the same surname.
- c. One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space below. The entry must consist of one of the following surnames:
  - (1) The surname of the other spouse;
  - (2) Any former surname of either spouse;
  - (3) A name combining into a single surname all or a segment of the premarriage surname or any former surname of either spouse; or
  - (4) A combination name separated by a hyphen, provided that each part of the combination surname is the premarriage surname or a former surname of either spouse.
- d. Use of the option under subdivision c has the effect of providing a record of the surname change. The marriage certificate containing the new surname, if any, constitutes proof that the use of the new surname, or the retention of the former surname, is lawful.
- e. Neither the use of nor the failure to use the option of selecting a new surname by means of this application, as provided in subdivision c, abrogates the right of either party to adopt a different surname through usage at a future date.

(Optional -- Enter new surname above)

**SECTION 2. AMENDMENT.** Section 14-03-20 of the North Dakota Century Code is amended and reenacted as follows:

**14-03-20. License and certificate.** The marriage license and certificate of the person solemnizing the marriage must be upon one blank form in duplicate consisting of two pages with a perforated seam to make it readily detachable. The form must be substantially as follows:



## CHAPTER 144

HOUSE BILL NO. 1393  
(Representative Rydell)

**CHILD CUSTODY DETERMINATIONS**

AN ACT to amend and reenact section 14-05-22 and subsection 1 of section 14-09-06.2 of the North Dakota Century Code, relating to 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.** Section 14-05-22 of the North Dakota Century Code is amended and reenacted as follows:

**14-05-22. Custody of children - Visitation rights - Costs.**

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.
3. ~~In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, this evidence creates 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. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and~~

convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.

4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.
5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, all court costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

**SECTION 2. AMENDMENT.** Subsection 1 of section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
  - a. The love, affection, and other emotional ties existing between the parents and child.
  - b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
  - c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
  - d. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
  - e. The permanence, as a family unit, of the existing or proposed custodial home.
  - f. The moral fitness of the parents.
  - g. The mental and physical health of the parents.
  - h. The home, school, and community record of the child.
  - i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

- j. ~~The existence Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, the court shall 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 this evidence creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child requires that parent's participation as a custodial parent. The court shall 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. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01.~~
- k. 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.
- l. Any other factors considered by the court to be relevant to a particular child custody dispute.

Approved April 20, 1993  
Filed April 20, 1993

## CHAPTER 145

SENATE BILL NO. 2306  
(Senators Mushik, Thane)  
(Representatives Kretschmar, Mahoney)

### DOMESTIC RELATIONS INTERIM ORDERS

AN ACT to amend and reenact section 14-05-23 of the North Dakota Century Code, relating to interim orders in domestic relations cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-05-23 of the North Dakota Century Code is amended and reenacted as follows:

**14-05-23. Temporary support, attorney fees, and custody.** During any time in which an action for divorce is pending, the court, upon application of a party, may issue, ex parte, an order 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 attorney fees and awarding. The court in the order may also award custody of any minor children to any a party. Such orders The order may be issued and served in accordance with such rules as are promulgated and filed with the clerks of the district courts within the judicial district from time to time by the district judges of the judicial district the North Dakota Rules of Court. The party to whom the order is directed has the right, upon motion, to have a hearing upon the necessity for the issuance of such an the order on the and any amounts to be paid, and unless such a. If the motion is not served and filed in the office of the clerk of the district court within five days after service of an the order issued under the provisions of this section, the order is final and nonappealable pending a final determination of the issues raised by the pleadings or until further order of the court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order that is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

Approved April 7, 1993  
Filed April 8, 1993



## CHAPTER 146

HOUSE BILL NO. 1427  
(Representative Laughlin)

### SUPPORT ORDER ENFORCEMENT

AN ACT to create and enact a new section to chapter 14-05 and a new section to chapter 14-06 of the North Dakota Century Code, relating to the enforcement of support orders arising out of decrees of divorce and decrees of separation from bed and board; and to declare an emergency.

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

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

**Enforcement of support order.** Any order or judgment for the support of a spouse or former spouse entered under this chapter may be enforced by any means permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659] and not forbidden under title 32. Any such order or judgment may also be enforced in any manner provided for the enforcement of an order for the payment of child support under chapter 14-09 to the fullest extent permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659]. For purposes of enforcement under chapter 14-09, the order for support of a spouse or former spouse must be treated as though it were an order for child support.

**SECTION 2.** A new section to chapter 14-06 of the North Dakota Century Code is created and enacted as follows:

**Enforcement of support order.** Any order or judgment for the support of a spouse entered under this chapter may be enforced by any means permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659] and not forbidden under title 32. Such an order or judgment may also be enforced in any manner provided for the enforcement of an order for the payment of child support under chapter 14-09 to the fullest extent permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659]. For purposes of enforcement under chapter 14-09, the order for support of a spouse must be treated as though it were an order for child support.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 7, 1993  
Filed April 8, 1993

## CHAPTER 147

SENATE BILL NO. 2369  
(Senator W. Stenehjem)

### DOMESTIC VIOLENCE

AN ACT to amend and reenact subsection 3 of section 14-07.1-01, section 14-07.1-06, subdivision b of subsection 1 of section 14-07.1-11, and section 14-07.1-16 of the North Dakota Century Code, relating to the definition of a domestic violence program, eligibility for domestic violence prevention fund moneys, and arrest without warrant in domestic violence situations; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 14-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~"Domestic violence program" means a program that provides emergency housing for victims of domestic violence and their dependents, plus some or all of the following additional services:~~

~~a. Counseling.~~

~~b. Advocacy.~~

~~c. Community education on domestic violence.~~

~~d. Support groups.~~

~~e. Twenty-four hour crisis lines.~~

~~f. Referral to other sources for services not provided by the domestic violence program.~~

"Domestic violence organization" means a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence.

**SECTION 2. AMENDMENT.** Section 14-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **14-07.1-06. Penalty for violation of a protection order.** Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes criminal

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<sup>1</sup> NOTE: Section 14-07.1-06 was also amended by section 4 of House Bill No. 1077, chapter 89.

contempt of court subject to penalties therefor. A second or subsequent violation of a protection order is a class C felony subject to the penalties therefor.

**SECTION 3. AMENDMENT.** Subdivision b of subsection 1 of section 14-07.1-11 of the North Dakota Century Code is amended and reenacted as follows:

- b. ~~The officer has probable cause to believe the person, within four hours of the ascertainment of probable cause, has assaulted that person's family or household member as defined in section 14-07.1-01, although the assault did not take place in the presence of the officer. From the time the officer determines there is probable cause to arrest for an assault of a family or household member as defined in section 14-07.1-01, the officer has four hours in which to make a warrantless arrest, whether or not the assault took place in the presence of the officer. After four hours has elapsed, the officer must secure an arrest warrant before making an arrest. A law enforcement officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.~~

**SECTION 4. AMENDMENT.** Section 14-07.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-16. Grants - Eligibility - Conditions - Limitation.** The department shall administer moneys in the domestic violence prevention fund for grants to ~~private nonprofit domestic violence organizations that are engaged in providing emergency housing for victims of domestic violence and their dependents as defined in section 14-07.1-01.~~ An eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind. Grants are renewable within the limits of legislative appropriation, if the applicant continues to meet the eligibility criteria established by this section and rules adopted by the department. Grant application deadlines may be included in any rules adopted to implement this section. ~~No initial grant may exceed the amount of twenty thousand dollars per biennium, but any appropriated funds remaining unobligated after the first year of the biennium may be disbursed by the department as supplemental grants.~~

Approved March 25, 1993  
Filed March 26, 1993

## CHAPTER 148

HOUSE BILL NO. 1239  
(Representatives Oban, Rydell, Kelsch)  
(Senators Freborg, DeMers, Robinson)

### DOMESTIC VIOLENCE RELEASE

AN ACT to create and enact a new subsection to section 14-07.1-10 of the North Dakota Century Code, relating to the release of an individual after an arrest for a crime involving domestic violence.

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

**SECTION 1.** A new subsection to section 14-07.1-10 of the North Dakota Century Code is created and enacted as follows:

An individual arrested for a crime involving domestic violence may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate pursuant to rule 5 of the North Dakota Rules of Criminal Procedure.

Approved April 15, 1993  
Filed April 15, 1993

## CHAPTER 149

SENATE BILL NO. 2368  
(Senators W. Stenehjelm, DeMers)

### VIOLENCE AND SEXUAL ASSAULT RECORDS

AN ACT to amend and reenact section 14-07.1-18 of the North Dakota Century Code, relating to domestic violence or sexual assault program records; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-07.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-18. Domestic violence or sexual assault program records - Confidentiality - Exceptions - Penalty.**

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:
  - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
  - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and
  - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
  - a. A client consents to the release of information that relates only to that client or the client's dependents;
  - b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
  - c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or

- d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.
3. Any person who violates this section is guilty of an infraction.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 16, 1993  
Filed March 16, 1993

## CHAPTER 150

HOUSE BILL NO. 1462  
(Representatives Mahoney, Dalrymple, Kelsch)  
(Senators Maxson, Traynor)

### GRANDPARENTAL VISITATION RIGHTS

AN ACT to amend and reenact section 14-09-05.1 of the North Dakota Century Code, relating to grandparental rights of visitation of unmarried minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-09-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-05.1. Grandparental rights of visitation to unmarried minors -** ~~Mediation or arbitration.~~ The grandparents ~~and great-grandparents~~ of an unmarried minor ~~may~~ must be granted reasonable visitation rights and the great grandparents may be granted reasonable visitation rights to the minor during the period of minority by the district court upon application by the grandparents or great-grandparents unless a finding is made that visitation would be is not in the best interests of the minor and would not interfere with the parent-child relationship. Visitation rights of grandparents to an unmarried minor are presumed to be in the best interest of the minor. The court shall consider the amount of personal contact that has occurred between the grandparents or great grandparents and the minor, and the minor's parents, prior to the application. This section does not apply if to agency adoptions or when the minor has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to under this section prior to before the adoption of the minor are automatically may be terminated upon the adoption if termination of the rights is in the best interest of the minor. An application for visitation rights under this section may be considered by the district court in conjunction with a divorce proceeding involving the parent of the minor child. If any district court of this state has retains jurisdiction over the custodial placement of the minor child or children involved by virtue of any prior proceedings, the rights conferred by this section may be enforced by the grandparents or the great grandparents through motion under the prior proceeding. If no district court otherwise has jurisdiction, a proceeding to enforce grandparental rights must may be brought against the custodial parent as a civil action and venue in the county of residence of the minor children child. The custodial parent must be named as defendant. This section may not be construed to require joinder The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights if the joinder is not otherwise required.

Approved April 15, 1993  
Filed April 15, 1993

## CHAPTER 151

SENATE BILL NO. 2488  
(Senators Holmberg, Evanson, Maxson)  
(Representatives Kelsch, Mahoney)

### CHILD CUSTODY ABUSE ALLEGATIONS

AN ACT to create and enact a new subdivision to subsection 1 of section 14-09-06.2 and a new section to chapter 14-09 of the North Dakota Century Code, relating to effect of allegations of child abuse or sexual abuse in child custody determinations.

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

**SECTION 1.** A new subdivision to subsection 1 of section 14-09-06.2 of the North Dakota Century Code is created and enacted as follows:

The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.

**SECTION 2.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

**Allegation of harm to child - Effect.** If the court finds that an allegation of harm to a child by one parent against the other is false and not made in good faith, the court shall order the parent making the false allegation to pay court costs and reasonable attorney's fees incurred by the other parent in responding to the allegation.

Approved April 7, 1993  
Filed April 8, 1993



## CHAPTER 152

HOUSE BILL NO. 1181

(Human Services Committee)

(At the request of the Department of Human Services)

### CHILD SUPPORT ENFORCEMENT

AN ACT to create and enact a new section to chapter 14-09, a new subsection to section 14-09-08.6, and a new section to chapter 50-09 of the North Dakota Century Code, relating to provisions for child support; to amend and reenact sections 14-09-08.1, 14-09-08.2, 14-09-08.3, subsection 3 of section 14-09-08.4, sections 14-09-08.5, 14-09-08.8, 14-09-08.11, 14-09-08.12, if House Bill No. 1021 of the fifty-third legislative assembly does not become effective, subsection 3 of section 14-09-09.7, sections 14-09-09.13, 14-09-09.16, 14-09-09.17, subsection 2 of section 14-12.1-19, section 14-12.1-24, subsection 1 of section 14-12.1-40, sections 14-17-09, 14-17-18, and 50-09-02.1 of the North Dakota Century Code and subsection 3 of section 16 of chapter 148 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 152 of the 1991 Session Laws of North Dakota, relating to provisions for child support; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

##### Requests for information from income payor.

1. A child support agency or the public authority may mail a request for information to the income payor in any matter in which it secures reliable information that the income payor may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.
2. Within ten days after receipt of a request for information issued under subsection 1, an income payor shall provide the requestor with a written statement informing the requestor whether or not the income payor is, or within the thirty days immediately preceding receipt of the request has been, an income payor with respect to that obligor. If the income payor is, or within the previous thirty days has been, an income payor with respect to that obligor, the income payor shall furnish information to the requestor including:
  - a. The amount of any income currently paid to the obligor, calculated on a monthly basis;
  - b. The total amount of income paid to the obligor in the six months preceding the month in which the request is received;
  - c. Information regarding any health insurance that may be made available to the obligor's children through the income payor;

- d. The social security number under which payment of any income by the income payor to the obligor is reported;
  - e. The obligor's address; and
  - f. If the income payor is no longer an income payor with respect to that obligor, the date of last payment and any forwarding address.
3. Any income payor failing to comply with any requirements of this section may be punished by the court for civil contempt. The court shall first afford such income payor a reasonable opportunity to purge itself of contempt.
4. A proceeding against an income payor under this section may be commenced upon motion by a child support agency or the public authority and must be commenced within ninety days after the income payor's act or failure to act upon which such proceeding is based.

**SECTION 2. AMENDMENT.** Section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.1. Support payments - Payment to court - Transfer of payment to court of recipient's residence - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.**

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the clerk of court, as trustee, for remittance to the obligee. The clerk shall remit the payments within ten working days of receipt unless the address of the obligee is unknown to the clerk. The clerk shall maintain records listing the amount of the payments, the date when the payments must be made, the names and addresses of the parties subject to the order, and any other information necessary for the proper administration of the order. Upon the filing with the clerk of court of notice of the assignment of support rights to a state, payments must be credited and transmitted pursuant to the assignment and in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651, et seq., as amended].
2. The parties subject to the order shall immediately inform the clerk of their social security numbers and of any change of address or change of any other condition which may affect the proper administration of this chapter.
3. Whenever there is failure to make the payments as required, the clerk shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure.
- ~~2-~~ 4. The court of its own motion or on motion of the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in

the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, the provisions of this section apply as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

- 3- 5. The clerk of court, at the option of the clerk, may deposit payments received by the clerk under this section in a special trust account in either the Bank of North Dakota or in a banking institution of this state designated as a depository of public funds under chapter 21-04 and make payments from the trust account to the obligee or the clerk may deposit payments received by the clerk under this section with the county treasurer and direct their disbursement under chapter 11-14.

**SECTION 3. AMENDMENT.** Section 14-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.2. Support for children after majority - Retroactive application.**

1. ~~In the absence of a written agreement to the contrary entered into after July 1, 1989, a~~ A judgment or order requiring the payment of child support until the child attains majority 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~~ requirements of subsection 1 are met. The clerk of court shall serve the affidavit by first-class mail upon the person owing the duty of support. Upon the filing of the affidavit, the child support continues pursuant to subsection 1, ~~unless, if 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 before the district court, the court shall determine if the requirements of subsection 1 are met and shall enter an order accordingly.~~
3. This section applies to child support orders concerning children described in subsection 1, regardless of the date of entry of the order, provided that the affidavit described in subsection 2 is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever comes first.
4. This section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree or if the court determines the support to be appropriate.

**SECTION 4. AMENDMENT.** Section 14-09-08.3 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.3. Duration of child support obligations.** A Unless dates for the commencement or termination of a child support obligation are specified by the court's order, a judgment or order requiring the payment of child support continues is effective as to the child in the month in which the order is signed and continues until the end of the month in which the support obligation terminates.

**SECTION 5. AMENDMENT.** Subsection 3 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

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 the motion or petition for amendment arises out of a periodic review of a child support order, and 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.

**SECTION 6. AMENDMENT.** Subsection 3 of section 16 of chapter 148 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 152 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

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 the motion or petition for amendment arises out of a periodic review of a child support order, and 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.

**SECTION 7. AMENDMENT.** Section 14-09-08.5 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.5. Notice of periodic review of child support orders.**

1. The child support agency shall provide written notice that a child support order being enforced by the child support agency may be subject to review under section 16 of chapter 148 of the 1989 Session Laws or section 14-09-08.4. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency, at least thirty-five days before the commencement of the review.

2. The notice to the obligor must inform the obligor of the duty to furnish the information required by section 14-09-08.6 and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the information. The notice must also inform the obligor that the review determination will be mailed to the obligor following the review. The notice must be accompanied by ~~a copy of the income withholding statutes~~ and an income report form, together with instructions for the accurate completion of the income report form.

**SECTION 8.** A new subsection to section 14-09-08.6 of the North Dakota Century Code is created and enacted as follows:

If an application to the court made pursuant to subsection 3 has not resulted in the production of information concerning the obligor's income sufficient to accomplish the review, the child support agency may base its review determination on the assumption that the obligor's income has increased at the rate of ten percent per year since the child support order under review was entered or last modified.

**SECTION 9. AMENDMENT.** Section 14-09-08.8 of the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> **14-09-08.8. Motion for amendment of amount for child support - How made - Presumption where obligor's income unknown.**

1. Upon a determination by a child support agency, made under section 16 of chapter 148 of the 1989 Session Laws or section 14-09-08.4, that it must seek amendment of a child support order, the child support agency may file and serve a motion and supporting documents.
2. The court may determine the motion based upon the files and records, and evidence received in consideration of the motion. If the child support agency certifies that, despite diligent efforts to secure reliable information concerning the obligor's income, the obligor has not produced such information, and if the obligor provides the court with no reliable evidence concerning the obligor's income, it is presumed that the obligor's income has increased at the rate of ten percent per year since the child support order was entered or last modified.

**SECTION 10. AMENDMENT.** Section 14-09-08.11 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.11. Eligible child - Coverage to continue.** A minor child that an obligor is required to cover as a beneficiary under section 14-09-08.10 is eligible for insurance coverage as a dependent of the obligor until the child's eighteenth birthday or until further order of the court. Insurance companies and nonprofit health service corporations licensed in this state shall continue coverage of a minor child insured under an accident and health insurance policy or health service contract while the legal custody of the minor child has been given by the court to the obligee to the same extent as the general public is covered as long as the minor

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<sup>1</sup> NOTE: Section 14-09-08.8 was also amended by section 8 of House Bill No. 1002, chapter 2.

child meets all the other usual qualifications for insurability and payment continues on the policy or contract premiums. Insurance companies and nonprofit health service corporations licensed in this state shall provide coverage for minor children of an obligor who has been ordered to obtain dependent health insurance under the terms and conditions applicable to coverage for newly born children, as though the date of the order issued under section 14-09-08.10 was the day of the child's birth, and further provided that coverage must be provided to the same extent the general public is covered as long as the minor child meets all the other usual qualifications for insurability and policy or contract premiums are paid. A determination that legal custody will be with a parent other than a parent who pays policy or contract premiums, or on whose behalf payment of policy or contract premiums is made, may not be a basis for cancellation of the minor child's accident and health insurance policy or health service contract.

**SECTION 11. AMENDMENT.** Section 14-09-08.12 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.12. Authorization to insurer.** The signature of the custodial parent of the insured dependent, the obligee, or the obligee's assignee is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services, for the release of information concerning the insured dependent or coverage available to the insured dependent, and otherwise for purposes of verifying coverage and payment for the insured dependent, in the same manner and to the same extent as the signature of the insured.

**SECTION 12. AMENDMENT.** If House Bill No. 1021 does not become effective, subsection 3 of section 14-09-09.7 of the North Dakota Century Code is amended and reenacted as follows:

3. There is a rebuttable presumption that the amount of child support ~~which~~ that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes ~~that factors not considered by the guidelines will result in an undue hardship to the obligor or a child for whom support is sought, applying criteria established by the public authority which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support.~~ A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:
  - a. State the child support amount determined through application of the guidelines;
  - b. Identify the criteria that rebut the presumption of correctness of that amount; and
  - c. State the child support amount determined after application of the criteria that rebut the presumption.

**SECTION 13. AMENDMENT.** Section 14-09-09.13 of 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, 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 section 14-09-09.14~~ on the obligor by first-class mail. 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, 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. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.
8. That the income withholding order applies to any current or subsequent income payor or period of employment.
9. 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 14. AMENDMENT.** Section 14-09-09.16 of 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 sections 14-09-09.3 and 14-09-09.15~~ 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 five working days of the date of the court's determination. 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 properly subject to an income withholding order and that the income payor is therefore required to withhold 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.
11. When an obligor employed by an income payor terminates that employment, the income payor must promptly so notify the clerk and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

**SECTION 15. AMENDMENT.** Section 14-09-09.17 of 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 be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payors have been subjected to income withholding orders with respect to a child support obligation, the clerk shall suspend the income withholding order directed to one or more income payors, provided that the amount of child support withheld by the remaining income payor or payors equals the amount determined under subsection 3 of section 14-09-09.13. The clerk shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The clerk shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payor.

**SECTION 16. AMENDMENT.** Subsection 2 of section 14-12.1-19 of the North Dakota Century Code is amended and reenacted as follows:

2. If the obligor or ~~his~~ the obligor's property is not found in the county, and the prosecuting attorney discovers that the obligor or ~~his~~ the obligor's property may be found in another county of this state or in another state he shall so inform the court. Thereupon the clerk of court

shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. If the documents received by the responding court included three copies of the petition and certificate, and one copy of the act of the initiating state, the documents forwarded by the clerk must also include three copies of the petition and certificate, and one copy of the act of the initiating state. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If ~~the a~~ clerk of a court of this state forwards documents to another court ~~he~~ the clerk shall forthwith notify the initiating court.

**SECTION 17. 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 - Change of circumstances - Payment to clerk - Powers and duties of court and prosecuting attorney - Forwarding of order.**

1. If the responding court finds a duty of support it shall order the obligor to furnish support or reimbursement therefor in accordance with the provisions of section 14-09-09.7 and may subject the property of the obligor to the order.
2. The court, upon a finding of a material change 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.
3. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding state.
4. 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.
5. 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 and~~ it appears that proceedings to enforce the order would be effective in another county, the order must be transcribed to that county in the manner provided in section 14-09-08.1, except that a copy of the order so transcribed must be certified to be a true copy of the certified copy of the order. The prosecuting attorney ~~to whom the certified copy of the~~ county to which the order is ~~forwarded~~ transcribed shall proceed with

enforcement and report the results of the proceedings to the court ~~first issuing the order~~ initiating jurisdiction.

**SECTION 18. AMENDMENT.** Subsection 1 of section 14-12.1-40 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon registration the registered foreign support order must be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner. The registered foreign support order may be transcribed to another county in the manner provided in section 14-09-08.1, except that a copy of the registered foreign support order so transcribed must be certified to be a true copy of the certified copy of the registered foreign support order.

**SECTION 19. AMENDMENT.** Section 14-17-09 of the North Dakota Century Code is amended and reenacted as follows:

<sup>2</sup> **14-17-09. Pretrial proceedings.**

1. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing ~~must~~ may be held. The court may order that the hearing be held before a referee. The public must be barred from the hearing. A record of the proceeding or any portion thereof must be kept if any party requests, or the court orders. Rules of evidence need not be observed.
2. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.
3. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

**SECTION 20. AMENDMENT.** Section 14-17-18 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-18. Right to counsel - Free transcript on appeal.**

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<sup>2</sup> NOTE: Section 14-17-09 was also amended by section 7 of House Bill No. 1077, chapter 89.

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel ~~for a~~ to represent the interests of any party who is financially unable to obtain counsel in proceedings leading to the initial judicial determination of parentage under this chapter.
2. A parent who relinquishes or proposes to relinquish a minor for adoption, under section 14-17-24, is entitled to legal counsel during all stages of a proceeding to terminate the parent and child relationship under that section if the child is to be placed for adoption by a child-placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at the parent's own expense, ~~or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons. The court shall appoint counsel to represent the interests of a parent who is financially unable to obtain counsel.~~ Prior to the termination proceeding held under section 14-17-24, the court or a person designated by the court shall inform the parent of the right to counsel provided by this section.
3. An attorney appearing on behalf of a child support agency or a county social service board, or the state's attorney, represents the interests of the people of the state of North Dakota in the enforcement of child support obligations. Representation by such an 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.
4. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

**SECTION 21. AMENDMENT.** Section 50-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-02.1. State agency to submit plans - Administer Family Support Act -**  
**Establish data system - Provide capacity for electronic funds transfer.**

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under the Family Support Act of 1988 [Pub. L. 100-485; 102 Stat. 2343]. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of the Family Support Act of 1988 and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as authorized by federal law.
2. The state agency shall establish a statewide automated data processing system designed to conform to requirements imposed by or under the Family

Support Act of 1988. The state agency must make that system available for the use of clerks of court in carrying out their duties under section 14-09-08.1. The official records of the state regarding all child support amounts owed, collected, and distributed must be maintained in that system.

3. The statewide automated data processing system must provide capability for electronic funds transfer for the purpose of income withholding and interstate collections.

**SECTION 22.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

State agency may compromise claims. The state agency may compromise claims arising out of assignments made under sections 50-09-06 and 50-09-06.1, on such terms as it may deem just and appropriate. The state agency may not be compelled to compromise any claim.

**SECTION 23. EFFECTIVE DATE.** Section 21 of this Act becomes effective October 1, 1995; provided, however, it is the intention of the legislature that the department of human services take such actions, prior to October 1, 1995, as are reasonably necessary to assure that a functioning, certifiable statewide automated data processing and information retrieval system, designed effectively and efficiently to assist in the management of child support programs, exists on that date.

Approved April 15, 1993

Filed April 15, 1993

## CHAPTER 153

SENATE BILL NO. 2294  
(Senator W. Stenehjem)  
(Representative Poolman)

### ADOPTION OF AN ADULT

AN ACT to amend and reenact subsections 1 and 7 of section 14-15-11 and subsection 1 of section 14-15-16 of the North Dakota Century Code, relating to notice of a petition to adopt an adult.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 7 of section 14-15-11 of the North Dakota Century Code are amended and reenacted as follows:

1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing must be given by the petitioner to ~~(a)~~ the department of human services; ~~(b)~~ any agency or person whose consent to the adoption is required by this chapter but who has not consented; ~~(c)~~ a person whose consent is dispensed with upon any ground mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06 but who has not consented; and ~~(d)~~ any person identified by the court as a natural parent or a possible natural parent of the minor, upon making inquiry to the extent necessary and appropriate, as in proceedings under section 27-20-45 and section 14-17-24, unless the person has relinquished parental rights or his parental rights have been previously terminated by a court. The notice to the department of human services must be accompanied by a copy of the petition.
- b. Notice of the filing of a petition to adopt an adult must be given by the petitioner at least twenty days before the date of the hearing to each living parent of the adult to be adopted.
7. After the filing of a petition to adopt an adult the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required but who has not consented and to each living parent of the adult to be adopted. The court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the persons involved.

<sup>1</sup> SECTION 2. AMENDMENT. Subsection 1 of section 14-15-16 of the North Dakota Century Code is amended and reenacted as follows:

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, the parents of an adult to be adopted, and representatives of the agencies present to perform their official duties. Upon a showing of good cause by the petitioner, the court may prohibit the parents of an adult to be adopted from attending the adoption hearings and proceedings. A parent of an adult to be adopted who is prohibited by the court from attending the proceedings may submit relevant testimony or information regarding the petition to the court in writing.

Approved March 25, 1993

Filed March 26, 1993

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<sup>1</sup> NOTE: Section 14-15-16 was also amended by section 2 of House Bill No. 1107, chapter 154.

## CHAPTER 154

HOUSE BILL NO. 1107

(Human Services Committee)

(At the request of the Department of Human Services)

### GENETIC PARENT AND SIBLING IDENTIFICATION

AN ACT to amend and reenact subsections 2 and 6 of section 14-15-11 and section 14-15-16 of the North Dakota Century Code, relating to petitions for adoption and to information identifying adopted persons and their genetic parents and siblings.

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

**SECTION 1. AMENDMENT.** Subsections 2 and 6 of section 14-15-11 of the North Dakota Century Code are amended and reenacted as follows:

2. An investigation must be made by ~~the department of human services, a county social service board, a licensed child-placing agency, or any other qualified agency or person designated by the court,~~ to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.
6. The department of human services ~~or the agency or persons designated by the court to make the required investigation, when required to consent to the adoption,~~ may request other departments or agencies within or without this state the licensed child-placing agency to make investigations of designated portions of the inquiry as may be appropriate and to make a written report thereof as a supplemental report to the court ~~and shall make similar investigations and reports on behalf of other agencies or persons designated by the courts of this state or another place.~~

**SECTION 2. AMENDMENT.** Section 14-15-16 of the North Dakota Century Code is amended and reenacted as follows:

<sup>1</sup> 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. The provisions of this section supersede any other law regarding public hearings and records.
2. For purposes of this section:

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<sup>1</sup> NOTE: Section 14-15-16 was also amended by section 2 of Senate Bill No. 2294, chapter 153.



- a. "Department" means the department of human services.
  - b. "Genetic parent" includes a man presumed or adjudicated to be the adopted person's father under chapter 14-17 and an alleged father when so indicated in the files of the child-placing agency or the department, but only if there exists in those files information that corroborates the allegation of paternity, including the existence of communications between the alleged father and the child-placing agency, or between the alleged father and the genetic mother or members of her family, or such other corroborative information as may be permitted by rules adopted by the department.
  - c. "Genetic sibling" means persons with the genetic relationship of sister, brother, half-sister, or half-brother.
3. 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- 4. 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- 5. 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.
6. ~~In addition, the~~ 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- 7. 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- 8. ~~An adopted person who is eighteen years of age or over older may request the department of human services to secure and disclose initiate the disclosure of information identifying the adopted child's person's genetic parents or to secure and disclose initiate the disclosure of nonidentifying information not on file with the board department 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 by the adopted 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.~~
9. An adopted person who is eighteen years of age or older may request the department to initiate the disclosure of information identifying the adopted person's adult genetic sibling.
10. A genetic parent of a person, with respect to whom that parent's parental rights were voluntarily terminated, after that person has reached twenty-one years of age, may request the department to initiate the disclosure of information identifying that person or to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.
11. An adult genetic sibling of a person, with respect to whom the parental rights of the sibling's and the person's mutual parent or parents were voluntarily terminated, after that person has reached twenty-one years of age, may request the department to initiate disclosure of information identifying that person.
12. The department shall, within five working days of receipt of a request under subsection 8, 9, 10, or 11, notify in writing a child-placing agency having access to the requested information. If the department's records do not identify any child-placing agency having access to the requested information, the department, within five working days after receipt of the

request, shall so notify the requester in writing. The requester may designate a child-placing agency from a list of such agencies furnished by the department, ask the department to designate an agency, or terminate the request.

- 6- 13. ~~Within three months~~ ninety days after receiving notice of the ~~request of the adopted person or genetic parent a request made under subsection 8, 9, 10, or 11,~~ the child-placing agency shall make complete and reasonable efforts to notify the genetic parents of the adopted person or to notify the person placed for adoption by the genetic parents person or persons with respect to which a disclosure of identifying information has been requested. The child-placing agency must certify the results of its efforts to the department within one hundred twenty days after receipt of the request. The child-placing agency may charge a reasonable fee to the adopted person or the genetic parent requester for the cost of making a search pursuant to ~~this subsection~~ the request. 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 person or with the person placed for adoption by the genetic parents; the person with respect to whom a disclosure of identifying information has been requested. The personal and confidential contact ~~shall~~ may not be by mail and ~~shall~~ must 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~~.
14. The personal and confidential contact shall must 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, or genetic sibling and certifying that each genetic parent or the adopted person, or genetic sibling contacted 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 person ~~or~~ genetic parent, or genetic sibling.
  - d. The right of the genetic parent or the adopted person, or genetic sibling 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 authorize disclosure, or refuse to authorize disclosure.
  - 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. e. The effect of a failure of the genetic parent or the adopted person, or genetic sibling to file either a consent to disclosure or an affidavit stating that the identifying information should not be

disclosed either authorize disclosure or refuse to authorize disclosure.

15. An adopted person, genetic parent, or genetic sibling, with respect to whom a disclosure of identifying information has been requested, may authorize disclosure, refuse to authorize disclosure, or take no action. If no action is taken in response to a request, the child-placing agency must treat that as a refusal to authorize disclosure, except that it does not preclude disclosure after the person's death.

16. The certification of the child-placing agency to the department must include:

a. A statement of whether it has been able to notify the person about whom a disclosure of identifying information was requested and whether a notification was precluded by the death of the person.

b. If a genetic sibling was to be notified at the request of an adopted person, or if an adopted person was to be notified at the request of a genetic sibling, a statement of whether either person knows the identity of any mutual genetic parent.

c. Assurances that:

(1) No disclosure of identifying information has been made with respect to any adopted person, genetic parent, or genetic sibling who has not authorized the disclosure in writing unless the child-placing agency has verified that the person has died leaving no unrevoked written refusal to authorize disclosure.

(2) Any disclosure of identifying information that might lawfully be made under this section was made within ten days after the date of receipt of written authorization or the date on which the agency verified that the person had died.

d. Copies of any written authorization of disclosure or refusal to authorize disclosure.

e. A statement that the person about whom disclosure of identifying information was requested has neither authorized nor refused to authorize disclosure at the time of the certification.

f. The date of each notification.

g. A copy of each affidavit of notification.

~~7- 17.~~ If the child-placing agency certifies to the department of human services that it has been is unable to notify the genetic parent or the, adopted person, or genetic sibling within three months ninety days, the identifying information shall not be disclosed to the adopted person or the genetic parent.

18. ~~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 authorizes 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 the consenting parent. If 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 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.

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 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.
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 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 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.
10. Any adopted person eighteen 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 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.
19. The child-placing agency, acting on the request of an adopted person to disclose identifying information about a genetic sibling, or acting on the request of a genetic sibling to disclose identifying information about an

adopted person, must determine if either person knows the identity of a living mutual genetic parent. If either person knows the identity of a living mutual genetic parent, no disclosure may be made unless that parent is first notified, in the manner provided for in subsection 13, and authorizes the disclosure.

~~11-~~ 20. 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.

~~12-~~ 21. No person may be required to disclose the name or identity of either an adoptive parent or an adopted person except:

- a. In accordance with this section;
- b. As authorized in writing by the adoptive parent or the adopted person;
- c. Upon order of the court ~~for good cause shown in exceptional cases entered in a proceeding brought under subsection 22.~~

22. An adopted person, a genetic parent, a genetic sibling, or a guardian of any of those persons may petition the district court for an order directing the disclosure of identifying information. The petitioner must state that efforts to secure the requested disclosure have been made under this section or are forbidden under this section, that the petitioner has a significant need for the disclosure, and the nature of that need. The petition must name the department and any child-placing agency which has

received a request under subsection 8, 9, 10, or 11 as respondents. The respondents must furnish, to the court, for in-camera review, copies of such records as the respondents may possess that contain requested identifying information. The court may determine if persons about whom the disclosure of identifying information is requested must be furnished notice of the proceeding, and may require that the respondents give notice to those persons. If those persons participate in the proceeding, they must be permitted to do so in a manner, to be determined by the court, which avoids disclosure of identifying information except when disclosure is ordered by the court. The court may order disclosure only if the petitioner demonstrates that disclosure will not result in any substantial harm to the person about whom identifying information is sought. The court may not order the disclosure of identifying information concerning any person who objects to that disclosure.

- ~~13-~~ 23. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after July 1, 1979.
- ~~14-~~ 24. 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.
- ~~15-~~ 25. 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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