

DOMESTIC RELATIONS AND PERSONS

CHAPTER 130

House Bill No. 290
(Graham, J. A. Stormon and Haugland)

MISCELLANEOUS REQUIREMENTS IN ADOPTION**AN ACT**

To amend and reenact sections 14-1104, 14-1105, 14-1110, and 14-1111 of the North Dakota Revised Code of 1943, and section 14-1108 of the 1947 Supplement to the North Dakota Revised Code of 1943, relating to adoption of children, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. AMENDMENT.) Section 14-1104 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

14-1104. CONSENT OF PARENT OR GUARDIAN OF MINOR, OR OF THE DIRECTOR OF THE DIVISION OF CHILD WELFARE, REQUIRED, AND HOW GIVEN: EXCEPTIONS.) A legitimate child cannot be adopted without the consent of its parent or parents, nor an illegitimate child without the consent of its mother, but the consent of a parent who has abandoned the child, or who cannot be found, or whose parental rights have been terminated as provided by law shall be dispensed with and consent may be given by the director of the division of child welfare of the public welfare board, or waived by order of the court. If the parental rights of one parent have been judicially terminated the consent of the other parent is sufficient. The consent of a parent who is insane or otherwise incapable of giving consent, may be dispensed with, and consent may be given by the guardian, if the child has a guardian, or if there is no guardian, by the director of the division of child welfare of the public welfare board. The consent of a parent who has lost custody of the child through divorce proceedings, or of the father of an illegitimate child shall not be required. The consent by a parent must be signed before a judge of the county court or a judge of the juvenile court or juvenile commissioner of the county where the parent is living or where the child was born, and after the judge or juvenile commissioner has explained to the parent the effect of the consent and has examined the parent and is satisfied that the consent is voluntary and is freely

given. The minority of a parent is not ground for revoking consent. In all cases the reason for giving the consent must be stated in the consent. When consent is given by the director of the division of child welfare it must be accompanied by a certified copy of the order terminating parental rights.

SECTION 2. AMENDMENT.) Section 14-1105 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

14-1105. CONSENT OF PERSON TO BE ADOPTED.) The consent of a child, if over the age of ten years, is necessary to its adoption. It must be given in writing before the judge of the district court hearing the petition for adoption. In the case of an adult his consent alone given in writing before the judge hearing the matter is sufficient.

SECTION 3. AMENDMENT.) Section 14-1108 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

15-1108. WHO MAY PETITION FOR ADOPTION.) Any adult may petition the district court in the county of his residence for leave to adopt a person of any age at least ten years younger than himself and if desired for a change of such person's name, and any nonresident of the state who is related to the person to be adopted may petition the district court of the judicial district in which such person to be adopted resides for such adoption. Such petition for adoption shall be filed in the office of the clerk of court before any hearing is had or any order made.

SECTION 4. AMENDMENT.) Section 14-1110 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

14-1110. HEARING IN ADOPTION PROCEEDINGS AND SERVICE OF NOTICE THEREOF.) The court shall appoint a time and place for hearing the petition and shall allow reasonable time not exceeding thirty days for the investigation required by section 14-1109. Notice of the hearing shall be given to the director of the division of child welfare at least ten days before the hearing in such manner as the court may direct and proof thereof shall be filed with the clerk of the court prior to the hearing on said petition. Whenever a minor child to be adopted has a guardian, notice of the hearing shall be given to such guardian. When the parents of any minor child are dead or have abandoned the child and cannot be found, and the child has no duly appointed guardian in the state, notice of the hearing on the petition for adoption shall be given to the person who is caring for or has custody of the child. Notice must be given to any parent not consenting, whose parental

rights have not been terminated, including a parent who has lost custody of the child through divorce proceedings, a parent who is insane or otherwise incapable of giving consent, and to the father of an illegitimate child against whom paternity has been duly adjudged. Such notice shall be given in such manner as the court may direct. In the event that the court shall require notice to be given by publication, such notice shall be published once a week for three successive weeks, the last publication to be at least ten days prior to the day set for the hearing. If the hearing cannot be had at the time appointed it shall be adjourned and the court may upon its own motion or upon motion of any interested person fix another time for the hearing and upon such hearing may grant or deny the petition or grant a further adjournment. The petitioner and the person to be adopted, if over ten years of age, shall attend the hearing unless the court otherwise orders.

SECTION 5. AMENDMENT.) Section 14-1111 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

14-1111. PROCEEDINGS ON HEARING; DECREE.) If upon the hearing of the petition the court shall be satisfied of the identity and relationship of the persons concerned and that the petitioner is, or in case of husband and wife, that the petitioners are, of sufficient ability to bring up the child and to furnish him suitable nurture and education and that it is fit and proper that the petition be granted, a decree shall be made setting forth the facts and ordering that from and after the date of the decree the child shall be deemed and taken to be the child of the petitioner or petitioners, and the court, if desired, may change the name of such child in and by the same decree. Whenever a decree of adoption is issued a duly certified copy thereof shall be mailed to the division of child welfare.

SECTION 6. EMERGENCY.) This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1949.

CHAPTER 131

House Bill No. 291
(Graham, J. A. Stormon and Haugland)

PARENT AND CHILD RELATION IN ADOPTION
AN ACT

Relating to adoption: providing conditions under which adoption proceedings will be conclusively presumed valid, and the relation of parent and child established; and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1.) Where a decree of adoption has been rendered in a district court or in a county court having increased jurisdiction in this state and the child named in such decree has been under the care and in the custody of the person or persons named in such decree as adoptive parent or parents for at least two years immediately following the rendition of such decree and for at least one year after this act became effective and that said adoptive parent or parents during said period of time have supported, cared for, and maintained a home for such child and that the natural parent or parents of said child have not, nor has any other person supported or contributed to the support or care of such child or asserted any right to care for, and have the custody of, such child, it shall be conclusively presumed that such natural parent or parents and all other persons claiming to have any right of custody of, or control over, such child have abandoned such child and have consented to the adoption of such child by said adoptive parent or parents named in such decree of adoption and said child shall be deemed to be the duly and legally adopted child of the person or persons named in such decree as adoptive parent or parents, and the relation of parent and child shall be deemed to have come into existence as of the date when the said decree of adoption was rendered, without regard to whether such decree was valid or invalid, and all the legal incidents, rights and obligations of the natural relation of parent and child shall exist between the said child and the persons named in the decree of adoption as adoptive parent or parents.

SECTION 2.) This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 11, 1949.