

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 144

### SENATE BILL NO. 2285

(Senators Schobinger, Solberg, B. Stenehjem, Yockim)  
(Representatives Poolman, Price)

## DISABILITY DEFINED FOR DISCRIMINATION PURPOSES

AN ACT to amend and reenact sections 14-02.4-02, 14-02.4-03, 14-02.4-04, 14-02.4-05, 14-02.4-06, 14-02.4-08, 14-02.4-09, 14-02.4-12, 14-02.4-13, 14-02.4-14, 14-02.4-15, 14-02.4-16, 14-02.4-17, and 14-02.4-18 of the North Dakota Century Code, relating to definitions for purposes of discrimination and reasonable accommodation of individuals with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-02.4-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-02. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
4. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, housing accommodations, property rights, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances,

requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
  - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
  - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.
- 4+ 5. "Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.
- 5+ 6. "Employer" means a person within the state who employs one or more employees for more than one quarter of the year, and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.
- 6+ 7. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.
- 7+ "Handicap" means an impairment that substantially limits one or more major life activities. The term includes having a record of such an impairment or being regarded as having such an impairment.
8. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
9. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.

10. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.
11. "Person" means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public corporation, and the state and a political subdivision and agency thereof.
12. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.
13. "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.
14. "Real estate broker" and "real estate salesman" mean a real estate broker and real estate salesman as defined in section 43-23-06.1.
15. "Real property" means a right, title, interest in or to the possession, ownership, enjoyment, or occupancy of a parcel of land, building situated thereon, or portion of the building.
16. "Reasonable accommodations" means accommodations by an employer that do not:
  - a. Unduly disrupt or interfere with the employer's normal operations;
  - b. Threaten the health or safety of the ~~handicapped~~ individual with a disability or others;
  - c. Contradict a business necessity of the employer; or
  - d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
17. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
18. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

**SECTION 2. AMENDMENT.** Section 14-02.4-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-03. Employer's discriminatory practices.** It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, 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~~ disability 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 forty-four thousand dollars.

**SECTION 3. AMENDMENT.** Section 14-02.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-04. Employment agency's discriminatory practices.** It is a discriminatory practice for an employment agency to accord adverse or unequal treatment to a person in connection with an application for employment, referral, or request for assistance in procurement of employees because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

**SECTION 4. AMENDMENT.** Section 14-02.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-05. Labor organization's discriminatory practices.** It is a discriminatory practice for a labor organization to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal treatment to a person with respect to the person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or condition of employment because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance.

**SECTION 5. AMENDMENT.** Section 14-02.4-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-06. Certain employment advertising deemed discriminatory.** It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, 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 6. AMENDMENT.** Section 14-02.4-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-08. Qualification based on religion, sex, national origin, physical or mental ~~handicap~~ disability, 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~~ disability, or marital status in those circumstances where religion, sex, national origin, physical or mental ~~handicap~~ disability, 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.

**SECTION 7. AMENDMENT.** Section 14-02.4-09 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 8. AMENDMENT.** Section 14-02.4-12 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-12. Discriminatory housing practices by owner or agent.** It is a discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed or trust, or will to:

1. Refuse to transfer an interest in real property or housing accommodation to a person because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance;

2. Discriminate against a person in the terms, conditions, or privileges of the transfer of an interest in real property or housing accommodation because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance; or
3. Indicate or publicize that the transfer of an interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of a particular race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance.

**SECTION 9. AMENDMENT.** Section 14-02.4-13 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-13. Discriminatory housing practice by financial institution or lender.** It is a discriminatory practice for a person, or agent or employee of the person, who lends or provides other financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of real property to discriminate in lending or financial assistance decisions, or in the extension of services in connection therewith, based on the race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance of the person seeking the loan or financial assistance.

**SECTION 10. AMENDMENT.** Section 14-02.4-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-14. Public accommodations - Discriminatory practices.** It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public accommodations; or to give adverse, unlawful, or unequal treatment to a person with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available, because of the person's race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance.

**SECTION 11. AMENDMENT.** Section 14-02.4-15 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-15. Public services - Discriminatory practices.** It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to a person access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in connection therewith because of the person's race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance.

**SECTION 12. AMENDMENT.** Section 14-02.4-16 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-16. Advertising public accommodations or services - Discriminatory practices - Exceptions.** It is a discriminatory practice for a person to advertise or in any other manner indicate or publicize that the patronage of persons of a particular race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance is unwelcome, objectionable, not acceptable, or not solicited. This section does not prohibit a notice or

advertisement banning minors from places where alcoholic beverages are being served.

**SECTION 13. AMENDMENT.** Section 14-02.4-17 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-17. Credit transactions - Discriminatory practices.** It is a discriminatory practice, except as permitted or required by the Equal Credit Opportunity Act [15 U.S.C. 1691], for a person, whether acting as an individual or for another, to deny credit, increase the charges or fees for or collateral required to secure credit, restrict the amount or use of credit extended, impose different terms or conditions with respect to the credit extended to a person, or item or service related thereto because of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability, or status with respect to marriage or public assistance. This section does not prohibit a party to a credit transaction from considering the credit history of a person or from taking reasonable action thereon.

**SECTION 14. AMENDMENT.** Section 14-02.4-18 of the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 10, 1995  
Filed March 13, 1995

## CHAPTER 145

SENATE BILL NO. 2251  
(Senator Holmberg)

## EMPLOYER DISCRIMINATORY PRACTICES

AN ACT to amend and reenact section 14-02.4-10 of the North Dakota Century Code, relating to when physical and medical examinations of employees are discriminatory practices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-10 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-10. Employment of individual - Exceptions - Physical examination - Investigation of medical history.

1. Sections 14-02.4-03 through 14-02.4-06 do not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or in the domestic service of a person.
2. The employment of one person in place of another, standing by itself, is not evidence of a discriminatory practice.
3. ~~It~~ After a conditional offer of employment, it is not discriminatory practice for an employer, employment agency, or labor organization to:
  - a. Require a person to undergo physical examination for the purpose of determining the person's capability to perform ~~available employment~~ the essential functions of the job with or without reasonable accommodations if every entering employee in the same job category is subjected to the examination; or
  - b. Conduct an investigation as to the person's medical history for the purpose of determining the person's capability to perform available employment if every entering employee in the same job category is subjected to the investigation.
4. Medical history obtained under this section must be collected and maintained separate from nonmedical information and must be kept confidential.

Approved March 17, 1995  
Filed March 20, 1995



**CHAPTER 146****SENATE BILL NO. 2362**

(Senators W. Stenehjem, Traynor)  
(Representatives Kretschmar, Mahoney)

**LABOR DEPARTMENT DISCRIMINATION MEDIATION**

AN ACT to amend and reenact section 14-02.4-21 of the North Dakota Century Code, relating to mediation of discrimination complaints by the department of labor.

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

**SECTION 1. AMENDMENT.** Section 14-02.4-21 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-21. Optional mediation by department of labor - Relief - Appeals.** The department of labor may receive complaints of discriminating employment practices under this chapter and attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. If the commissioner of labor or the commissioner's representative determines the claim of discriminating employment practices is valid, the commissioner may prohibit the employer from engaging in the discriminating employment practice and order appropriate relief such as an injunction, equitable relief, or backpay. Earnings or potential earned income by the employee who was the object of the discrimination will reduce the backpay granted. A party may appeal a decision of the commissioner to the district court in the district in which the complaining employee was employed at the time of the alleged discriminatory practice. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter.

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 147

### SENATE BILL NO. 2117

(Political Subdivisions Committee)  
(At the request of the Supreme Court)

## DISTRICT COURT CLERK DUTIES

AN ACT to amend and reenact sections 14-03-10, 14-03-11, 14-03-17, 14-03-19, 14-03-20, 14-03-21, 14-03-22, 14-03-24, 30.1-02-06, and 57-37.1-12 of the North Dakota Century Code, relating to clerk of district court duties concerning marriage licenses, probate matters, and access to safety deposit boxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>69</sup> SECTION 1. AMENDMENT. Section 14-03-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-10. Marriage may not be solemnized without license. A person may not solemnize any marriage until the parties to the marriage produce a license regularly issued not more than sixty days ~~prior to~~ before the date of the marriage by a clerk of district judge court serving the county in which either of the contracting parties or the parents of either of the parties resides or is temporarily domiciled, or if such county is unorganized, or disorganized, of the county to which it is attached for judicial purposes, or by a clerk of district judge court serving the county ~~wherein in which~~ the marriage is to be solemnized according to the terms of section 14-03-19. For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota ~~shall be~~ is deemed to reside in the county ~~wherein in which~~ that person is stationed.

SECTION 2. AMENDMENT. Section 14-03-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-11. Who issues marriage license to clerk of district judge court. When a clerk of district judge court desires to have a license for the ~~judge's clerk's~~ own marriage issued in the county of the ~~judge's clerk's~~ residence, the judge clerk may request another clerk of district judge court to act in the ~~judge's clerk's~~ stead upon the application for the license. The other clerk of district judge court has the power and authority to issue the license in the county of the residence of the judge clerk seeking the license. The request must be in writing and must be filed, with the application and other related papers ~~relative to it~~, and must be recorded in the marriage record. Upon the return of the license, the clerk of district judge court serving the county in which it was issued may record it and note the record thereon notwithstanding the judge clerk is one of the contracting parties named in the license.

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<sup>69</sup> Section 14-03-10 was also amended by section 1 of House Bill No. 1069, chapter 148.

<sup>70</sup> SECTION 3. AMENDMENT. Section 14-03-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-17. Application for license.

1. When application is made to ~~any a clerk of district judge of this state court~~ for a marriage license, the judge clerk shall inquire of the applicant upon oath ~~relative to~~ concerning the legality of the contemplated marriage. The judge clerk may examine other witnesses upon oath. The facts ~~relative to~~ concerning the legality of the marriage may be submitted to the district judge clerk by affidavit. The district judge clerk also shall require each applicant to submit the following facts upon blanks provided by the county, together with documentary evidence of age:
  - 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 district judge clerk a birth certificate or other satisfactory evidence of age. If either applicant is under the age of eighteen years, the district judge clerk shall require the written consent under oath of:
    - (1) Either parent of the minor applicant, if the parents are living together;
    - (2) The parent having the legal custody of the minor applicant, if the parents are not living together;
    - (3) The surviving parent, if one of the parents of the minor applicant is deceased; or
    - (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.
  - 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~~ decree.
2. All affidavits ~~shall~~ must be subscribed and sworn to before a person authorized to administer oaths. The district judge clerk shall retain on file in the ~~judge's clerk'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~~ is subject to the penalty provided in section 14-03-28.

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<sup>70</sup> Section 14-03-17 was also amended by section 2 of House Bill No. 1069, chapter 148.

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.

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(Optional -- Enter new surname above)

**SECTION 4. AMENDMENT.** Section 14-03-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-19. License issued to all who comply with law.** If a clerk of district judge court is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, then the district judge clerk shall issue and sign a marriage license in duplicate and affix the judge's clerk's seal to both the original and the duplicate.

**SECTION 5. AMENDMENT.** Section 14-03-20 of the 1993 Supplement to 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:

MARRIAGE LICENSE

State of North Dakota, )
)ss.
County of \_\_\_\_\_ )

To any person authorized by law to perform the marriage ceremony, greeting:

You are hereby authorized to join in marriage \_\_\_\_\_ of \_\_\_\_\_, aged \_\_\_\_\_ who has \_\_\_\_\_ been divorced, and \_\_\_\_\_ of \_\_\_\_\_, aged \_\_\_\_\_ who has \_\_\_\_\_ been divorced, and of this license and your certificate you will make due return to my office within five days.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_. (Seal)

Clerk of District Judge Court

CERTIFICATE OF MARRIAGE

I hereby certify that the persons named in the foregoing license, \_\_\_\_\_ and \_\_\_\_\_, whose names after marriage are \_\_\_\_\_ and \_\_\_\_\_, respectively, were by me joined in marriage at \_\_\_\_\_, county of \_\_\_\_\_, State of North Dakota, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

In the presence of \_\_\_\_\_ )
\_\_\_\_\_ )
Witnesses

Every marriage license must contain the full name of each party before the marriage. Every certificate of marriage must contain the full name of each party before and after the marriage and be signed by two witnesses to the marriage in addition to the signature of the person who solemnized the marriage.

SECTION 6. AMENDMENT. Section 14-03-21 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-21. License and certificate returned to clerk of district judge court - Duplicate delivered to persons married - Records kept. When a person authorized by law solemnizes a marriage, that person shall fill out and sign the certificate following the license in duplicate, giving the person's official title, or if a minister of the gospel or priest, the ecclesiastical body with which the minister or priest is connected. The original copy of the certificate and license must be returned to the clerk of district judge court who issued the license within five days after the date of the solemnization of the marriage, and the duplicate copy must be immediately delivered to the persons married. The judge clerk shall file the original copy in the judge's clerk's office and retain it as part of the judge's clerk's records. Any person who willfully neglects to make such return within the time required must be punished as is subject to the penalty provided in section 14-03-28.

**SECTION 7. AMENDMENT.** Section 14-03-22 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-22. Marriage license fee - Supplemental fee - Duties of officers.** For the issuance and filing of a marriage license the clerk of district judge court shall collect the sum of six dollars from the party applying for the license. The judge clerk shall also collect from the applicant a supplemental fee of twenty-nine dollars for aid to victims of domestic violence through the domestic violence prevention fund; pursuant to in accordance with chapter 14-07.1. The judge clerk shall deposit the collected sums monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The judge clerk shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in the registrar's office for that purpose. The registrar shall index the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

**SECTION 8. AMENDMENT.** Section 14-03-24 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-24. Certified record is evidence.** The books of record of marriage licenses issued and certificates returned which are kept by a clerk of district judge court serving any county, or copies of such entries certified by the judge clerk under the clerk's seal of the court, and certified copies of the records of the registrar of vital statistics, must be received as evidence in all courts, and are prima facie evidence in all courts and places of the facts stated therein.

**SECTION 9. AMENDMENT.** Section 30.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-02-06. (1-307) Powers.** The acts and orders which this title specifies as performable by the ~~court or~~ district court may be performed either by a judge of the appropriate court or by a person, including the clerk, designated by the appropriate court by a written order filed and recorded in the office of the court. However, without a written order of the court, the clerk may sign all appropriate documents in uncontested informal probate matters if the requirements of sections 30.1-12-08 and 30.1-13-01 have been satisfied, at least one hundred twenty hours have elapsed since the decedent's death, and the person seeking appointment as personal representative is named in the will or otherwise has priority under section 30.1-13-03 or others entitled to appointment have renounced the right to appointment.

**SECTION 10. AMENDMENT.** Section 57-37.1-12 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-12. Duties of depositories - Inventory of contents of safe deposit box required. No safe deposit company, trust company, corporation, limited liability company, bank, or other institution or person engaged in the business of renting safe deposit boxes or other receptacles of similar character may rent any such box or receptacle without first procuring from each person given access thereto an agreement in writing to the effect that upon the death of any person having the right of access to the box or receptacle, notice of the person's death will be given to the safe depository, bailee, or lessor before seeking access to the box or receptacle. A safe deposit company, trust company, corporation, limited liability company, bank, or other institution or person having the possession, control, custody, or partial custody of any safe deposit box or similar receptacle may not permit access to the box or receptacle after the death of any person who at the time of the person's death had the right or privilege of access thereto, by any other person until a complete inventory of the entire contents of the safe deposit box or receptacle has been prepared by the personal representative of the deceased person, a cotenant of the safe deposit box or receptacle, or any other person granted access by the clerk of district court order in the presence of an officer or other agent of the lessor of the box. The inventory so prepared must be filed with the state tax commissioner by the lessor of the box within thirty days from the date of its preparation. After the lessor of the box has complied with the provisions of this section, it may not limit access to the safe deposit box or similar receptacle by the personal representative of the deceased person or cotenant of the safe deposit box or receptacle or to any other person granted access by the clerk of district court order, and it is released of all liability to the state of North Dakota, and for any assets, documents, or things taken from the safe deposit box or similar receptacle.

Approved March 7, 1995  
Filed March 7, 1995

## CHAPTER 148

### HOUSE BILL NO. 1069

(Representative Olson)

## MARRIAGE RESIDENCY AND SURNAME OPTIONS

AN ACT to create and enact a new section to chapter 14-03 of the North Dakota Century Code, relating to surnames; and to amend and reenact section 14-03-10 and subsection 3 of section 14-03-17 of the North Dakota Century Code, relating to residency requirements and applications for marriage licenses.

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

<sup>71</sup> SECTION 1. AMENDMENT. Section 14-03-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-03-10. Marriage may not be solemnized without license.** A person may not solemnize any marriage until the parties to the marriage produce a license regularly issued not more than sixty days prior to the date of the marriage by a:

1. A district judge serving the county in which either of the contracting parties resides or the parents is temporarily domiciled;
2. A district judge serving the county in which a parent of either of the parties resides or is temporarily domiciled; or if such county is unorganized, or disorganized, of the county to which it is attached for judicial purposes, or by a
3. A district judge serving the county wherein in which the marriage is to be solemnized according to the terms of section 14-03-19.

For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota shall be deemed to reside in the county wherein in which that person is stationed.

<sup>72</sup> SECTION 2. AMENDMENT. Subsection 3 of section 14-03-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Each application for a marriage license must also contain a statement to the following effect:

#### NOTICE TO APPLICANTS

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<sup>71</sup> Section 14-03-10 was also amended by section 1 of Senate Bill No. 2117, chapter 147.

<sup>72</sup> Section 14-03-17 was also amended by section 3 of Senate Bill No. 2117, chapter 147.



- 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.
- e: 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 premarrriage 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 premarrriage surname or a former surname of either spouse.
- d: Use of the option under subdivision e 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 e, abrogates the right of either party to adopt a different surname through usage at a future date.

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(Optional – Enter new surname above)

regarding surname options which is consistent with section 3 of this Act.

SECTION 3. A new section to chapter 14-03 of the North Dakota Century Code is created and enacted as follows:

Surname options.

1. 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.
2. 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.
3. 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 provided on

the marriage license application. The entry on the application must consist of one of the following surnames:

- a. The surname of the other spouse;
  - b. Any former surname of either spouse;
  - c. A name combining into a single surname all or a segment of the premarriage surname or any former surname of either spouse; or
  - d. A combination name separated by a hyphen, provided that each part of the combination surname is the premarriage surname or former surname of either spouse.
4. Use of the option under subsection 3 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.
  5. Neither the use of nor the failure to use the option of selecting a new surname by means of a marriage license application, as provided in subsection 3, abrogates the right of either party to adopt a different surname through usage at a future date.
  6. Compliance with the surname provisions of this section is sufficient to meet the satisfactory evidence requirements of section 39-06-07.1.

Approved March 14, 1995

Filed March 14, 1995

## CHAPTER 149

## SENATE BILL NO. 2316

(Senators W. Stenehjem, Traynor)

(Representatives Clayburgh, Kretschmar, Mahoney)

## DOMESTIC RELATIONS INTERIM ORDERS

AN ACT to amend and reenact sections 14-05-23, 14-06-02, subsection 1 of section 27-10-01.1, and subsection 1 of section 27-10-01.4 of the North Dakota Century Code, relating to interim orders in domestic relations proceedings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-05-23 of the 1993 Supplement to 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 minor children of the parties and for the payment of attorney fees. The court in the order may ~~also~~ award custody of minor children to a party. The order may be issued and served in accordance with 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 issuance of the order and any amounts to be paid. If the motion is not served and filed in the office of the clerk of the district court within five days after service of the order, 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~~ which 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.

**SECTION 2. AMENDMENT.** Section 14-06-02 of the North Dakota Century Code is amended and reenacted as follows:

**14-06-02. Temporary support, attorney fees, and custody.** During any time in which an action for separation 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 for the payment of attorney fees and awarding. ~~The court in the order may award custody of any minor children to any 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 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 order or the amounts to be paid; and unless such a motion is served and filed in the office of the clerk of the district court within five days after service of an 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 North Dakota Rules of Court.

**SECTION 3. AMENDMENT.** Subsection 1 of section 27-10-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Contempt of court" means:
  - a. Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;
  - b. Intentional nonpayment of a sum of money ordered by the court to be paid in a case where by law execution cannot be awarded for the collection of the sum;
  - c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer including a referee or magistrate;
  - d. Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;
  - e. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court; ~~or~~
  - f. Intentional behavior in derogation of any provision of a summons issued pursuant to rule 8.4 of the North Dakota Rules of Court; or
  - g. Any other act or omission specified in the court rules or by law as a ground for contempt of court.

**SECTION 4. AMENDMENT.** Subsection 1 of section 27-10-01.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A court may impose one or more of the following remedial sanctions:
  - a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;
  - b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, ~~or~~ e, or f of subsection 1 of section 27-10-01.1. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;
  - c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;
  - d. An order designed to ensure compliance with a previous order of the court; or
  - e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.

**SECTION 5. EFFECTIVE DATE.** Sections 3 and 4 of this Act are contingent on the adoption of the proposed rule 8.4 of the North Dakota Rules of Court by the North Dakota supreme court and become effective on the date the clerk of the supreme court certifies to the legislative council that the rule is in effect.

Approved March 15, 1995

Filed March 15, 1995

## CHAPTER 150

### SENATE BILL NO. 2397

(Senator W. Stenehjem)  
(Representative Kliniske)

## PROTECTION ORDERS AND ARRESTS

AN ACT to create and enact a new subsection to section 14-07.1-02 of the North Dakota Century Code, relating to an order for protection; and to amend and reenact subsection 2 of section 14-07.1-01, subsection 6 of section 14-07.1-03, sections 14-07.1-10, 14-07.1-11, and subsection 2 of section 14-07.1-13 of the North Dakota Century Code, relating to adult abuse.

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

<sup>73</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 14-07.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 2.** A new subsection to section 14-07.1-02 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

The petition for an order for protection must contain a statement listing each civil or criminal action to which both parties were a party.

**SECTION 3. AMENDMENT.** Subsection 6 of section 14-07.1-03 of the North Dakota Century Code is amended and reenacted as follows:

6. If the filing fee Fees for filing the application has been waived by order of the court, the court may waive the fee for and service of process by the sheriff or other appropriate law enforcement agency or may order the respondent to pay these costs not be assessed to the petitioner for any proceeding seeking relief under chapter 14-07.1.

**SECTION 4. AMENDMENT.** Section 14-07.1-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### 14-07.1-10. Arrest procedures.

1. A If a law enforcement officer's decision to arrest and charge a person for officer has probable cause to believe that a person has committed a crime involving domestic violence may not be dependent on the specific

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<sup>73</sup> Section 14-07.1-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

consent of the victim, involve a consideration of the relationship of the parties, or be based solely on a request by the victim, whether the offense is a felony or misdemeanor, and whether or not the crime was committed in the presence of the officer, the law enforcement officer shall presume that arresting the person is the appropriate response.

2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately, including the comparative severity of injuries involved, to determine whether to seek an arrest warrant.
3. 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.

**SECTION 5. AMENDMENT.** Section 14-07.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-11. Arrest without warrant.**

1. A law enforcement officer ~~may~~ shall arrest a person without a warrant if:
  - a. ~~The~~ the person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer; ~~or~~
  - b. ~~From.~~
2. A law enforcement officer may arrest a person without a warrant if the arrest is made within four hours 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.
- 2- 3. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

**SECTION 6. AMENDMENT.** Subsection 2 of section 14-07.1-13 of the North Dakota Century Code is amended and reenacted as follows:

2. If the court has probable cause to believe that the person charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further acts of violence, the court ~~may~~ shall require that the person surrender for safekeeping any firearm or specified dangerous weapon in the person's immediate possession or control, or subject to the person's immediate possession or control, to the sheriff of the county or chief of police of the city in which the person resides.

Approved March 15, 1995

Filed March 15, 1995



**CHAPTER 151****HOUSE BILL NO. 1395**

(Representatives Klein, Mahoney, Sabby)  
(Senators Freborg, Solberg)

**GUARDIAN AD LITEM FEES**

AN ACT to amend and reenact section 14-07.1-05.1 of the North Dakota Century Code, relating to notice of payment of guardian ad litem fees.

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

**SECTION 1. AMENDMENT.** Section 14-07.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-05.1. Appointment of guardian ad litem for minor.** The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support, or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time ~~prior to~~ before the full hearing. The role of the guardian ad litem ~~shall consist~~ consists of investigation and making a recommendation and report to the court. At no time may the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem ~~shall expire~~ expires immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court, after notice to the state's attorney of the county of venue, may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.

Approved March 10, 1995  
Filed March 13, 1995

**CHAPTER 152****SENATE BILL NO. 2410**

(Senators Mushik, Thane)  
(Representative Gerntholz)

**MINORS COUNSELING INFORMATION  
CONFIDENTIALITY**

AN ACT to provide for confidentiality of private information concerning minors.

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

**SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

1. "Counseling center" means a domestic violence organization as defined in section 14-07.1-18.
2. "Private information" means any information disclosed by a minor to a counselor, employee, or volunteer at a counseling center in the course of counseling or treatment of the minor.

**SECTION 2. Confidentiality of information concerning a minor.** Except as provided in section 3 of this Act, a counseling center may not disclose private information concerning a minor to the parent, guardian, or custodian of the minor unless the minor authorizes the counseling center to disclose the information or the disclosure of the information is necessary for a party reasonably believed to be in need of protection.

**SECTION 3. Access procedures for parents.** The counseling center shall establish procedures to provide access by a parent, guardian, or custodian of a minor to private information concerning the minor, subject to the following:

1. The counseling center may deny parental access to private information when the minor, who is the subject of that information, requests that the counseling center deny the access. The counseling center shall provide the minors who seek counseling, treatment, or other assistance from the center with a notification that the minor has the right to request that parental access to private information be denied. The counseling center may require the minor submit a written request that the access be denied. The written request must set forth the reasons for denying parental access and must be signed by the minor.
2. Upon receipt of the request, the counseling center shall determine if honoring the request to deny parental access would be in the best interest of the minor. In making the determination, the counseling center shall consider the following:
  - a. Whether the minor is of sufficient age and maturity to be able to explain the reasons for and to understand the consequences of the request to deny access.

- b. Whether the personal situation of the minor is such that denying parental access may protect the minor from physical or emotional harm.
- c. Whether there is a basis for believing that the minor's reasons for denying parental access are reasonably accurate.
- d. Whether the private information in question is of a nature that disclosure of the information to a parent could lead to physical or emotional harm to the minor.
- e. Whether the private information concerns medical, dental, or other health needs of the minor and if so, the information may be released only if failure to inform the parent would seriously jeopardize the health of the minor.

Approved March 20, 1995  
Filed March 20, 1995

**CHAPTER 153****SENATE BILL NO. 2334**

(Senators Yockim, Holmberg)  
(Representatives Boucher, Gulleson, Stenehjem)

**PROFESSIONAL LICENSE SUSPENSION FOR  
NONPAYMENT OF CHILD SUPPORT**

AN ACT to create and enact a new section to chapter 14-08.1 of the North Dakota Century Code, relating to suspension of an occupational or professional license for nonpayment of child support.

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

**SECTION 1.** A new section to chapter 14-08.1 of the North Dakota Century Code is created and enacted as follows:

**Suspension of occupational or professional license for nonpayment of child support.** When considering a contempt citation against a child support obligor who is one thousand dollars or more in arrears in child support, the court shall address and make specific findings on the issue of whether the obligor has an occupational or a professional certificate, permit, or license that the court may suspend for failure to pay child support. The court may suspend any certificate, permit, or license issued by or on behalf of the state or any of its licensing authorities or occupational or professional boards, which the obligor is required to obtain prior to engaging in the obligor's occupation or profession. Following a decision to suspend an obligor's certificate, permit, or license, the court shall notify the obligor that the decision becomes final thirty days after the notification unless the obligor satisfies or makes arrangements to pay the entire outstanding payment due. The court shall notify the appropriate licensing authority or occupational or professional board of the court's decision to suspend an obligor's certificate, permit, or license. A certificate, permit, or license suspended by an order issued under this section may be reissued only by order of the court. An appeal by an obligor who has had a certificate, permit, or license suspended under this section is an appeal from the court's order and may not be appealed to the licensing authority or occupational or professional board.

Approved March 24, 1995  
Filed March 27, 1995

## CHAPTER 154

## HOUSE BILL NO. 1031

(Legislative Council)

(Interim Budget Committee on Human Services)  
(Representatives Svedjan, Kaldor, Payne, Poolman)  
(Senators Thane, DeMers)DRIVER'S LICENSE SUSPENSION FOR CHILD  
SUPPORT NONPAYMENT

AN ACT to create and enact a new section to chapter 14-08.1 of the North Dakota Century Code, relating to suspension of motor vehicle operator's license for nonpayment of child support; and to amend and reenact section 39-06-19 of the North Dakota Century Code, relating to suspension of a motor vehicle operator's license for nonpayment of child support.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-08.1 of the North Dakota Century Code is created and enacted as follows:

Suspension of motor vehicle operator's license for nonpayment of child support. When considering a contempt citation against a child support obligor for failure to pay child support and the obligor is one thousand dollars or more in arrears, the court shall determine whether the obligor has a motor vehicle operator's license issued under chapter 39-06. The court may suspend a motor vehicle operator's license issued by the state which is held by the obligor. The court shall notify the department of transportation of the court's decision to suspend an obligor's motor vehicle operator's license. An appeal by an obligor who has had a motor vehicle operator's license suspended under this section is an appeal from the court's order and may not be appealed to the department of transportation. Except for statistical purposes, an entry on the driving record or abstract of a suspension under this section after the suspension ceases may not be available to the public other than by order of a court of competent jurisdiction. A suspension under this section is not subject to the financial responsibility reporting requirements.

SECTION 2. AMENDMENT. Section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-19. Expiration of license - Renewal.** Every operator's license issued under this chapter ~~shall expire~~ expires and ~~be~~ is renewed according to this section. The expiration date of operator's license for every person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of operator's license for every person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. If the licensee has reached the age of twenty-one and desires reissuance of a license without the distinctive color background required by section 39-06-14, the applicant may apply at any time for a replacement license. In all other cases, application with fee for renewal of license must be presented to the ~~commissioner~~ director not prior to ten months before the expiration date of the operator's license. ~~The commissioner~~ director may require an examination of an applicant as upon an original application. The director may not

renew an operator's license if the license has been suspended under section 1 of this Act. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order. Every application for renewal of a license by an applicant must be accompanied by a certificate of examination from either the driver licensing or examining authorities or a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of the applicant. The ~~commissioner~~ director shall provide visual examination equipment at each location where a license may be renewed. The initial application for a motor vehicle operator's license may be accompanied by a statement of examination from a licensed physician or an optometrist, stating the corrected and uncorrected vision of the applicant, in lieu of the department examination. Such examination must be within six months of the driver license application. Every person submitting an application and fee for renewal of license one year or more after the expiration of a license, except an applicant whose military service has terminated less than thirty days prior to such application, must be treated as a new driver. The fee for renewal or replacement of an operator's license is ten dollars.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 155

## SENATE BILL NO. 2351

(Senator W. Stenehjerm)

(Representative Delmore)

## CHILD SUPPORT DUTIES

AN ACT to create and enact a new section to chapter 14-09, a new section to chapter 14-17, and a new subsection to section 14-17-24 of the North Dakota Century Code, relating to child support duties; to amend and reenact sections 14-09-09.16, 14-17-08, 14-17-15, 14-17-17, and 30.1-19-05 of the North Dakota Century Code, relating to child support duties and paternity determinations; to provide an effective date; and to declare an emergency.

**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:

Delinquent obligor may not renounce claims. An obligor whose child support obligation is delinquent may not renounce, waive, or disclaim any interest that obligor might otherwise claim in a decedent's estate, a trust, or a similar device, to the extent necessary to satisfy the delinquency. Any attempt to renounce, waive, or disclaim such an interest is void if attempted after notice of the delinquency is furnished to the person administering the estate, trust, or similar device, and is otherwise voidable.

**<sup>74</sup> SECTION 2. AMENDMENT.** Section 14-09-09.16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.16. Service of income withholding order on income payor.** The clerk of court shall serve the income withholding order and a copy of 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~~ sections 14-09-09.3 and 14-09-09.15 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~~ sections 14-09-09.3 and 14-09-09.15 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~~ sections 14-09-09.3 and 14-09-09.15 must be served on any subsequently

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<sup>74</sup> Section 14-09-09.16 was also amended by section 1 of Senate Bill No. 2069, chapter 157.

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~~ a stated 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 3. AMENDMENT.** Section 14-17-08 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-08. Parties.** The child must be made a party to the action. ~~If he~~ A child who is a minor ~~he~~ must be represented by ~~his general guardian~~ the child's parent whose parentage has been established under section 14-17-03 or a guardian ad litem appointed by the court. ~~The child's mother or father may not represent the child as guardian or otherwise.~~ The court may appoint the director of the county social service board as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 14-17-04, and each man alleged to be the natural father, must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

**SECTION 4.** A new section to chapter 14-17 of the North Dakota Century Code is created and enacted as follows:

Default.

1. Except as provided in subsection 3, if a person alleged to be the father in an action to determine the existence of the father and child relationship has failed after service of process to plead or otherwise appear within the time permitted under the rules of civil procedure, and the fact is made to appear by affidavit or otherwise, the court shall direct the clerk to enter an appropriate judgment by default establishing the existence of the father and child relationship.
2. Except as provided in subsection 3, if a person alleged to be the father in an action to determine the existence of the father and child relationship has pled or appeared in the action, but has failed to appear at a scheduled hearing, conference, or trial, or failed to appear for or refused to submit to genetic testing, and those facts are made to appear by affidavit or otherwise, the person, or if appearing by representative, the person's representative, must be served with written notice of the application for judgment at least eight days before the hearing on the application. If the person fails to appear at the hearing on the application or appears but fails either to cure a previous failure or refusal, or to provide satisfactory assurance of the person's willingness to cure a previous failure or refusal, the court shall direct the clerk to enter an appropriate judgment by default establishing the existence of the father and child relationship.
3. Judgment of default may not be entered:
  - a. When service of process has been made by published notice or by delivery of a copy without the state, until it is shown, by affidavit or otherwise, that the person is a presumed father or, if not a presumed father, that the person engaged in sexual intercourse with the child's mother at any possible time of conception;

- b. Against a minor unless represented in the action by a parent, general guardian, or guardian ad litem;
  - c. Against an incompetent person unless represented in the action by a guardian with sufficient authority; or
  - d. If more than one person was alleged to be the father, and the evidence establishes the existence of the father and child relationship between the child and a person who has appeared and participated in the action.
4. If the operation of this section requires the entry of judgments of default establishing the existence of the father and child relationship between a child and two or more persons, the court may grant relief from any of those judgments, on such terms as may be just, notwithstanding the passage of any period of time.

**SECTION 5. AMENDMENT.** Section 14-17-15 of the North Dakota Century Code is amended and reenacted as follows:

14-17-15. Costs. The court may order reasonable fees of ~~counsel~~; experts; and the child's guardian ad litem; and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county social service board of the county in which the child resides or is found. In addition, the court may award reasonable attorney's fees if an award is permitted under chapter 28-26.

**SECTION 6. AMENDMENT.** Section 14-17-17 of the North Dakota Century Code is amended and reenacted as follows:

14-17-17. Modification of judgment or order. The court has continuing jurisdiction to modify ~~or revoke~~ a judgment or order:

- 1. ~~For~~ for future education and support; and
- 2. ~~With respect to matters listed in subsections 3 and 4 of section 14-17-14 and subsection 2 of section 14-17-16; except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under subsection 4 of section 14-17-14 may specify that the judgment or order may not be modified or revoked.~~

**SECTION 7.** A new subsection to section 14-17-24 of the North Dakota Century Code is created and enacted as follows:

A termination of parental rights ordered under this section does not terminate the duty of either parent to support the child prior to the child's adoption unless that duty is specifically terminated by order of the court after notice of a proposed termination or relinquishment is given to the department of human services in the manner appropriate for the service of process in a civil action in this state.

**SECTION 8. AMENDMENT.** Section 30.1-19-05 of the North Dakota Century Code is amended and reenacted as follows:

30.1-19-05. (3-805) Classification of claims.

1. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
  - a. Costs and expenses of administration.
  - b. Reasonable funeral expenses.
  - c. Debts and taxes with preference under federal law.
  - d. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him.
  - e. The decedent's child support obligations that were due and unpaid before death.
  - f. Debts and taxes with preference under other laws of this state.
  - ~~f.~~ g. All other claims.
2. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

**SECTION 9. EFFECTIVE DATE.** Section 4 of this Act becomes effective April 1, 1995, if the fifty-fourth legislative assembly adjourns sine die on or before March 31, 1995, but otherwise becomes effective July 1, 1995.

**SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 5, 1995  
Filed April 6, 1995

**CHAPTER 156****HOUSE BILL NO. 1032**

(Legislative Council)

(Interim Budget Committee on Human Services)

(Representatives Rydell, Svedjan, Kaldor)

(Senators Thane, Mathern, DeMers)

**PATERNITY ACKNOWLEDGMENT PROCEDURES**

AN ACT to create and enact a new chapter to title 14 and a new section to chapter 14-09 of the North Dakota Century Code, relating to the establishment of paternity; to amend and reenact section 14-17-11 of the North Dakota Century Code, relating to the use of genetic tests in paternity proceedings; to provide an effective date; and to declare an emergency.

**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:

Full faith and credit for paternity determinations. In any proceeding in which paternity or nonpaternity of a child is alleged, full faith and credit must be given to a determination of paternity by another state, made before a determination of paternity under the laws of this state, whether established through voluntary acknowledgment or through administrative or judicial process.

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

Definitions. In this chapter, unless the context otherwise requires:

1. "Birthing hospital" means a hospital licensed under chapter 23-16 which provides obstetrical services.
2. "Department" means the department of human services.
3. "Donor" means a woman whose body produced an egg for the purposes of assisted conception, but does not include a woman whose body produces an egg used for the purpose of conceiving a child for that woman.
4. "Gestational carrier" means a woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.
5. "Married woman" includes a woman who attempted to marry by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid.
6. "Mother" means a woman who gives birth to a child or, if pregnancy resulted from assisted conception, the woman who is the donor but not the woman who is the gestational carrier.

7. "Party" means the man with whom the relationship of father and child is sought or established, the child's mother, and, for purposes of proceedings to relieve a party of the relationship of father and child, the child.
8. "Relationship of father and child" means the legal relationship existing between a father and his natural or adoptive child incident to which the law confers or imposes rights, privileges, duties, and obligations.

Construction of chapter - Place of acknowledgment or birth need not be within this state. This chapter is a remedial law and is to be broadly construed to provide a simple civil process for establishing the relationship of father and child through voluntary acknowledgment of paternity. This chapter may be applied to establish the relationship of father and child with respect to children not born in this state. A voluntary acknowledgment executed or acknowledged outside this state is effective under this chapter if the acknowledgment substantially complies with the requirements of this chapter.

Establishment of relationship of father and child. The relationship of father and child may be established by an acknowledgment of paternity, signed by both parents, given before a witness if:

1. The acknowledgment is made on a form, approved by the department, which provides:
  - a. Instructions for filing the acknowledgment with the department of health and consolidated laboratories;
  - b. Places for entry of the parents' names, addresses, and social security numbers; parents' signatures; and witnesses' signatures; and
2. The witness, or any agent of a child support agency, verifies that the parents have been provided:
  - a. Written materials about paternity establishment, including the manner in which the relationship of father and child established under this chapter may be vacated; and
  - b. A written description of the rights and responsibilities of acknowledging paternity.

Effect of voluntary acknowledgment of paternity - Who may dispute. The relationship of father and child established under this chapter has the force and effect of a relationship of father and child established through judgment of a court of competent jurisdiction. This is a presumption establishing paternity, and must be recognized as a basis for a support order, in any proceeding to establish, enforce, or modify a child support order, with no further proceedings to establish paternity. The establishment of the relationship may be contradicted only as provided in this chapter.

Filing of acknowledgment. An acknowledgment of paternity made under this chapter must be filed with the department of health and consolidated laboratories. Upon request of the department, the department of health and consolidated laboratories shall furnish a certified copy of an acknowledgment of paternity to the department.

Hospital-based program for acknowledgment of paternity - Effect of noncompliance.

1. During the period immediately preceding or following the birth of a child to an unmarried woman in a birthing hospital, the hospital, at a minimum, shall:
  - a. Provide to the mother and the alleged father, if he is present in the hospital:
    - (1) Written materials about paternity establishment;
    - (2) The forms necessary to voluntarily acknowledge paternity;
    - (3) A written description of the rights and responsibilities of acknowledging paternity; and
    - (4) The opportunity to speak, either by telephone or in person, with staff who are trained to clarify information and answer questions about paternity establishment;
  - b. Provide the mother and the alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital;
  - c. Afford due process safeguards by informing, in writing, the mother and the alleged father, if he is present, of the manner in which a relationship of father and child established under this chapter may be vacated; and
  - d. Forward completed acknowledgments to the department of health and consolidated laboratories.
2. The department may withhold medical assistance payments from any hospital that fails to comply with this section. At least thirty days in advance of any withholding, the department shall notify the hospital of the department's intention to withhold medical assistance payments from the hospital. The hospital may appeal the decision to withhold medical assistance benefits to the department.

Immunity from liability. A hospital, its agents, or its employees acting in accordance with this Act or attempting in good faith to do so are immune from civil liability for that activity.

Powers and duties of the department. The department shall:

1. Provide each birthing hospital in the state:
  - a. Written materials about paternity establishment.
  - b. Forms necessary to voluntarily acknowledge paternity.
  - c. A written description of the rights and responsibilities of acknowledging paternity.

2. Provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity reasonably necessary to assist a birthing hospital in its duties under this chapter.
3. In cooperation with the department of health and consolidated laboratories, secure information on each birthing hospital's paternity acknowledgment program at least annually.
4. In cases involving applications for child support services made to a child support agency which require paternity establishment, determine if a voluntary paternity acknowledgment has been filed with the department of health and consolidated laboratories.

When acknowledgment is voidable. An acknowledgment of paternity for a child born to a married woman is voidable unless:

1. The man acknowledging paternity was the woman's husband at the time of the child's birth; or
2. The acknowledgment is agreed to in writing by each man who was the woman's husband within three hundred days before the child's birth.

Vacation of acknowledgments - Time for commencing actions - Effect on presumptions under section 14-17-04 - Notice.

1. An acknowledgment of paternity made under this chapter may be vacated:
  - a. By a notarized writing signed by either the father or the mother and filed with the department of health and consolidated laboratories within ten days after the execution of the acknowledgment of paternity;
  - b. By order of the district court upon a showing, by a party, that an acknowledgment of paternity made under this chapter was the result of mistake, fraud, or misrepresentation by another party, or any other reason justifying relief;
  - c. By order of the district court upon a showing that a voidable acknowledgment of paternity made concerning the birth of a child to a married woman should be made void; or
  - d. By the department of health and consolidated laboratories upon receipt of two or more acknowledgments of paternity concerning the same child.
2. A party shall commence a claim for relief under subdivision b of subsection 1 within one year after execution of the acknowledgment of paternity. This limitation may only be extended:
  - a. Due to the minority of a child in a case brought by the child with respect to whom the relationship of father and child was established; or
  - b. Upon a showing that continued enforcement of a judgment based on an acknowledgment of paternity made under this chapter would

be manifestly unjust and unconscionable to all parties; that the party seeking relief was prevented by fraud or fraudulent concealment from discovering the claim for relief; and that the claim is commenced within one year after the claim was discovered or might, in the exercise of diligence, have been discovered.

3. The vacation of an acknowledgment of paternity under this section does not affect any presumption of paternity provided under section 14-17-04.
4. If the department of health and consolidated laboratories vacates an acknowledgment under this section, it promptly shall provide notice of its action to the mother, to each acknowledged father of the child, and, if the department has requested a certified copy of any vacated acknowledgment, to the department.

**SECTION 3. AMENDMENT.** Section 14-17-11 of the North Dakota Century Code is amended and reenacted as follows:

14-17-11. **Evidence relating to paternity.** Evidence relating to paternity may include:

1. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.
2. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.
3. Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. Verified documentation of the chain of custody of the genetic specimens is competent evidence to establish the chain of custody. A verified report obtained from an examiner appointed pursuant to section 14-17-10 must be admitted at trial unless a challenge written objection to the testing procedures or the results of genetic analysis has been made at least ten days before trial or at an earlier time determined by the court.
4. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests.
5. A voluntary acknowledgment of paternity executed under this Act.
6. All other evidence relevant to the issue of paternity of the child.

**SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act become effective April 1, 1995, if the fifty-fourth legislative assembly adjourns sine die on or before March 31, 1995, but otherwise become effective July 1, 1995.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 5, 1995  
Filed April 5, 1995



## CHAPTER 157

## SENATE BILL NO. 2069

(Legislative Council)

(Interim Judiciary Committee)

(Senators W. Stenehjem, Traynor)

(Representatives Klein, Brown, Kretschmar)

## UNIFORM INTERSTATE FAMILY SUPPORT ACT

AN ACT to create and enact chapter 14-12.2 of the North Dakota Century Code, relating to the Uniform Interstate Family Support Act; to amend and reenact sections 14-09-09.16 and 14-09-09.26 of the North Dakota Century Code, relating to child support enforcement procedures; and to repeal sections 14-09-09.19, 14-09-09.20, 14-09-09.21, 14-09-09.22, and chapter 14-12.1 of the North Dakota Century Code, relating to interstate income withholding and the Revised Uniform Reciprocal Enforcement of Support Act (1968).

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

<sup>75</sup> SECTION 1. AMENDMENT. Section 14-09-09.16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.16. Service of income withholding order on income payor.** The clerk of court shall serve the income withholding order and a copy of 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

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<sup>75</sup> Section 14-09-09.16 was also amended by section 2 of Senate Bill No. 2351, chapter 155.

- 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 2. AMENDMENT.** Section 14-09-09.26 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.26. State is real party in interest. The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted under section 14-09-08.9 or 14-09-08.13.
3. ~~Whenever a support order of another state is received with the documentation required by subsection 2 of section 14-09-09.19.~~
4. Whenever duties are imposed on the state or its public officials under ~~chapter 14-12.1~~ 14-12.2.

SECTION 3. Chapter 14-12.2 of the North Dakota Century Code is created and enacted as follows:

14-12.2-01. (101) Definitions. As used in this chapter:

1. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
2. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.
3. "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
4. "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month period or other period.
5. "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.
6. "Income-withholding order" means an order or other legal process directed to an obligor's income payor to withhold support from the income of the obligor.
7. "Initiating state" means a state in which a proceeding under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state.

8. "Initiating tribunal" means the authorized tribunal in an initiating state.
9. "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.
10. "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.
11. "Law" includes decisional and statutory law and rules having the force of law.
12. "Obligee" means:
  - a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
  - b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
  - c. An individual seeking a judgment determining parentage of the individual's child.
13. "Obligor" means an individual, or the estate of a decedent:
  - a. Who owes or is alleged to owe a duty of support;
  - b. Who is alleged but has not been adjudicated to be a parent of a child; or
  - c. Who is liable under a support order.
14. "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.
15. "Registering tribunal" means a tribunal in which a support order is registered.
16. "Responding state" means a state to which a proceeding is forwarded under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
17. "Responding tribunal" means the authorized tribunal in a responding state.
18. "Spousal-support order" means a support order for a spouse or former spouse of the obligor.
19. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established

procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter.

20. "Support enforcement agency" means a public official or agency authorized to seek:
- a. Enforcement of support orders or laws relating to the duty of support;
  - b. Establishment or modification of child support;
  - c. Determination of parentage; or
  - d. Location of obligors or their assets.
21. "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.
22. "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

14-12.2-02. (102) Tribunal of this state. The district court is the tribunal of this state.

14-12.2-03. (103) Remedies cumulative. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

14-12.2-04. (201) Bases for jurisdiction over nonresident. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with a summons within this state;
2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
3. The individual resided with the child in this state;
4. The individual resided in this state and provided prenatal expenses or support for the child;
5. The child resides in this state as a result of the acts or directives of the individual;
6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
7. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

14-12.2-05. (202) Procedure when exercising jurisdiction over nonresident. A tribunal of this state exercising personal jurisdiction over a nonresident under section 14-12.2-04 may apply section 14-12.2-28 to receive evidence from another state, and section 14-12.2-30 to obtain discovery through a tribunal of another state. In all other respects, sections 14-12.2-13 through 14-12.2-47 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

14-12.2-06. (203) Initiating and responding tribunal of this state. Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

14-12.2-07. (204) Simultaneous proceedings in another state.

1. If the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state, a tribunal of this state may exercise jurisdiction to establish a support order only if:
  - a. The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
  - b. The contesting party timely challenges the exercise of jurisdiction in the other state; and
  - c. If relevant, this state is the home state of the child.
2. If the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state, a tribunal of this state may not exercise jurisdiction to establish a support order if:
  - a. The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
  - b. The contesting party timely challenges the exercise of jurisdiction in this state; and
  - c. If relevant, the other state is the home state of the child.

14-12.2-08. (205) Continuing, exclusive jurisdiction.

1. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:
  - a. As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
  - b. Until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

2. A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.
3. If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:
  - a. Enforce the order that was modified as to amounts accruing before the modification;
  - b. Enforce nonmodifiable aspects of that order; and
  - c. Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.
4. A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this chapter.
5. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.
6. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

14-12.2-09. (206) Enforcement and modification of support order by tribunal having continuing jurisdiction.

1. A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.
2. A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 14-12.2-28 to receive evidence from another state and section 14-12.2-30 to obtain discovery through a tribunal of another state.
3. A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

14-12.2-10. (207) Recognition of child support orders.

1. If a proceeding is brought under this chapter, and one or more child support orders have been issued in this or another state with regard to

an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

- a. If only one tribunal has issued a child support order, the order of that tribunal must be recognized.
  - b. If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal must be recognized.
  - c. If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.
  - d. If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state may issue a child support order, which must be recognized.
2. The tribunal that has issued an order recognized under subsection 1 is the tribunal having continuing, exclusive jurisdiction.

14-12.2-11. (208) Multiple child support orders for two or more obligees. In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

14-12.2-12. (209) Credit for payments. Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

14-12.2-13. (301) Proceedings under this chapter.

1. Except as otherwise provided in this chapter, sections 14-12.2-13 through 14-12.2-31 apply to all proceedings under this chapter.
2. This chapter provides for the following proceedings:
  - a. Establishment of an order for spousal support or child support under section 14-12.2-32;
  - b. Enforcement of a support order and income-withholding order of another state without registration under sections 14-12.2-33 and 14-12.2-34;



- c. Registration of an order for spousal support or child support of another state for enforcement under sections 14-12.2-35 through 14-12.2-46;
  - d. Modification of an order for child support or spousal support issued by a tribunal of this state under sections 14-12.2-06 through 14-12.2-09;
  - e. Registration of an order for child support of another state for modification under sections 14-12.2-35 through 14-12.2-46;
  - f. Determination of parentage under section 14-12.2-47; and
  - g. Assertion of jurisdiction over nonresidents under sections 14-12.2-04 and 14-12.2-05.
3. An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

14-12.2-14. (302) Action by minor parent. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

14-12.2-15. (303) Application of law of this state. Except as otherwise provided by this chapter, a responding tribunal of this state:

1. Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and
2. Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

14-12.2-16. (304) Duties of initiating tribunal. Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:

1. To the responding tribunal or appropriate support enforcement agency in the responding state; or
2. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that the petitions and documents be forwarded to the appropriate tribunal and that receipt be acknowledged.

14-12.2-17. (305) Duties and powers of responding tribunal.

1. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly under subsection 3 of section 14-12.2-13, it shall cause the petition or pleading

to be filed and notify the petitioner by first-class mail where and when it was filed.

2. A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:
  - a. Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
  - b. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
  - c. Order income withholding;
  - d. Determine the amount of any arrearages, and specify a method of payment;
  - e. Enforce orders by civil or criminal contempt, or both;
  - f. Set aside property for satisfaction of the support order;
  - g. Place liens and order execution on the obligor's property;
  - h. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
  - i. Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
  - j. Order the obligor to seek appropriate employment by specified methods;
  - k. Award reasonable attorney's fees and other fees and costs; and
  - l. Grant any other available remedy.
3. A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.
4. A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.
5. If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

14-12.2-18. (306) Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by first-class mail where and when the pleading was sent.

14-12.2-19. (307) Duties of support enforcement agency.

1. A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.
2. A support enforcement agency that is providing services to the petitioner as appropriate shall:
  - a. Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;
  - b. Request an appropriate tribunal to set a date, time, and place for a hearing;
  - c. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
  - d. Within two business days, exclusive of Saturdays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first-class mail to the petitioner;
  - e. Within two business days, exclusive of Saturdays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first-class mail to the petitioner; and
  - f. Notify the petitioner if jurisdiction over the respondent cannot be obtained.
3. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

14-12.2-20. (308) Duty of attorney general. If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

14-12.2-21. (309) Private counsel. An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

14-12.2-22. (310) Duties of state information agency.

1. The department of human services is the state information agency under this chapter.
2. The state information agency shall:
  - a. Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state.
  - b. Maintain a register of tribunals and support enforcement agencies received from other states.

- c. Forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state.
- d. Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

14-12.2-23. (311) Pleadings and accompanying documents.

1. A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under section 14-12.2-24, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.
2. The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

14-12.2-24. (312) Nondisclosure of information in exceptional circumstances. Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

14-12.2-25. (313) Costs and fees.

1. The petitioner may not be required to pay a filing fee or other costs.
2. If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

3. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under sections 14-12.2-35 through 14-12.2-46, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

14-12.2-26. (314) Limited immunity of petitioner.

1. Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.
2. A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.
3. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.

14-12.2-27. (315) Nonparentage as defense. A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

14-12.2-28. (316) Special rules of evidence and procedure.

1. The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.
2. A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.
3. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.
4. Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.
5. Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.
6. In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall

cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

7. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.
8. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.
9. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

14-12.2-29. (317) Communications between tribunals. A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

14-12.2-30. (318) Assistance with discovery. A tribunal of this state may:

1. Request a tribunal of another state to assist in obtaining discovery; and
2. Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

14-12.2-31. (319) Receipt and disbursement of payments. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

14-12.2-32. (401) Petition to establish support order.

1. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:
  - a. The individual seeking the order resides in another state; or
  - b. The support enforcement agency seeking the order is located in another state.
2. The tribunal may issue a temporary child support order if:
  - a. The respondent has signed a verified statement acknowledging parentage;
  - b. The respondent has been determined by or pursuant to law to be the parent; or
  - c. There is other clear and convincing evidence that the respondent is the child's parent.

3. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders under section 14-12.2-17.

14-12.2-33. (501) Recognition of income-withholding order of another state.

1. An income-withholding order issued in another state may be sent by first-class mail to the obligor's employer without first filing a petition or comparable pleading or registering the order with a tribunal of this state. Upon receipt of the order, the employer shall:
  - a. Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state;
  - b. Immediately provide a copy of the order to the obligor; and
  - c. Distribute the funds as directed in the withholding order.
2. An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state. Section 14-12.2-38 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:
  - a. The person or agency designated to receive payments in the income-withholding order; or
  - b. If no person or agency is designated, the obligee.

14-12.2-34. (502) Administrative enforcement of orders.

1. A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.
2. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

14-12.2-35. (601) Registration of order for enforcement. A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

14-12.2-36. (602) Procedure to register order for enforcement.

1. A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the appropriate tribunal in this state:

- a. A letter of transmittal to the tribunal requesting registration and enforcement;
  - b. Two copies, including one certified copy, of all orders to be registered, including any modification of an order;
  - c. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
  - d. The name of the obligor and, if known:
    - (1) The obligor's address and social security number;
    - (2) The name and address of the obligor's employer and any other source of income of the obligor; and
    - (3) A description and the location of property of the obligor in this state not exempt from execution; and
  - e. The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
2. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.
  3. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

14-12.2-37. (603) Effect of registration for enforcement.

1. A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.
2. A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.
3. Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

14-12.2-38. (604) Choice of law.

1. The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.
2. In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

14-12.2-39. (605) Notice of registration of order.



1. When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
2. The notice must inform the nonregistering party:
  - a. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
  - b. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice;
  - c. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
  - d. Of the amount of any alleged arrearages.
3. Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer.

14-12.2-40. (606) Procedure to contest validity or enforcement of registered order.

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 14-12.2-41.
2. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

14-12.2-41. (607) Contest of registration or enforcement.

1. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
  - a. The issuing tribunal lacked personal jurisdiction over the contesting party;

- b. The order was obtained by fraud;
  - c. The order has been vacated, suspended, or modified by a later order;
  - d. The issuing tribunal has stayed the order pending appeal;
  - e. There is a defense under the law of this state to the remedy sought;
  - f. Full or partial payment has been made; or
  - g. The statute of limitation under section 14-12.2-38 precludes enforcement of some or all of the arrearages.
2. If a party presents evidence establishing a full or partial defense under subsection 1, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.
  3. If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

14-12.2-42. (608) Confirmed order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

14-12.2-43. (609) Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in sections 14-12.2-35 through 14-12.2-38 of this article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

14-12.2-44. (610) Effect of registration for modification. A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 14-12.2-45 have been met.

14-12.2-45. (611) Modification of child support order of another state.

1. After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if, after notice and hearing, it finds that:
  - a. The following requirements are met:
    - (1) The child, the individual obligee, and the obligor do not reside in the issuing state;

- (2) A petitioner who is a nonresident of this state seeks modification; and
  - (3) The respondent is subject to the personal jurisdiction of the tribunal of this state; or
- b. An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the support order and assume continuing, exclusive jurisdiction over the order.
2. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.
  3. A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state.
  4. On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.
  5. Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered.

14-12.2-46. (612) Recognition of order modified in another state. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

1. Enforce the order that was modified only as to amounts accruing before the modification;
2. Enforce only nonmodifiable aspects of that order;
3. Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
4. Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

14-12.2-47. (701) Proceeding to determine parentage.

1. A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

2. In a proceeding to determine parentage, a responding tribunal of this state shall apply section 14-12.2-28 and chapter 14-17.

14-12.2-48. (801) Grounds for rendition.

1. For purposes of sections 14-12.2-48 and 14-12.2-49, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.
2. The governor of this state may:
  - a. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or
  - b. On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.
3. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

14-12.2-49. (802) Conditions of rendition.

1. Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.
2. If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.
3. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

**SECTION 4. REPEAL.** Sections 14-09-09.19, 14-09-09.20, 14-09-09.21, 14-09-09.22, and chapter 14-12.1 of the North Dakota Century Code are repealed.

Approved March 10, 1995  
Filed March 13, 1995

## CHAPTER 158

## SENATE BILL NO. 2490

(Senator C. Nelson)

(Representatives Hanson, Kroeber)

## ASSISTED CONCEPTION

AN ACT to create and enact a new section to chapter 14-18 of the North Dakota Century Code, relating to paternity; to amend and reenact section 14-18-01 of the North Dakota Century Code, relating to the establishment of paternity; to repeal section 14-18-02 of the North Dakota Century Code, relating to the establishment of maternity; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-18-01 of the North Dakota Century Code is amended and reenacted as follows:

14-18-01. Definitions. As used in ~~sections 14-18-01 through 14-18-07~~ this chapter:

1. "Assisted conception" means a pregnancy resulting from insemination of an egg of a woman with sperm of a man by means other than sexual intercourse or by removal and implantation of an embryo after sexual intercourse, but does not include ~~the a pregnancy of a wife~~ resulting from the insemination of her an egg of a wife using her husband's sperm.
2. "Donor" means an individual whose body produces sperm or egg used for the purpose of assisted conception, whether or not a payment is made for the sperm or egg used, but does not include ~~a woman who gives birth to a resulting child~~ an individual whose body produces sperm or egg used for the purpose of conceiving a child for that individual.
3. "Gestational carrier" means an adult woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.
4. "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents.

SECTION 2. A new section to chapter 14-18 of the North Dakota Century Code is created and enacted as follows:

Paternity. Paternity of a child born to a gestational carrier is governed by chapter 14-17.

SECTION 3. REPEAL. Section 14-18-02 of the North Dakota Century Code is repealed.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 17, 1995

Filed March 20, 1995