

**1999 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1202**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1202

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 01-19-99

Tape Number	Side A	Side B	Meter #
1		x	18.2 - end
2	x		0.0 - 7.3
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: Rep. Frank Wald introduced bill 1202, relating to property and casualty insurance treatment of domestic violence. This bill is a model act sponsored by NAI. At least one dozen states have adopted some sort of domestic violence statute and more are going to introduce this or similar bills.

Rep. Johnson: For an individual, the spouse of someone who has caused damage, for them to recover those damages it must be prosecuted. The perpetrator doesn't have to be convicted but has to be prosecuted. So if the spouse chooses not to prosecute it would not make any impact.

Chairman Berg: As an example: One spouse owns a car, the other spouse is abusive and beats the car up or burns it. The intentional act policy in most policies would say; you two have insured these cars, we are not going to pay because you did this damage. What this bill would say is that if the abusing spouse did the intentional damage, the other spouse would receive the benefits under the policy.

Rep. Stefonowicz: Would this limit it to if they owned a house and they each owned half, then the person would collect half of the claim?

Chairman Berg: With a joint ownership where they each owned 50%. For example: they have a \$100,000. house with a \$50,000. mortgage. One spouse intentionally burns down the house. With a full claim, there would be \$50,000. of equity. Each person would get \$25,000. But the spouse that burnt the house wouldn't get their money. The bank would be paid their mortgage.

Rep. Froseth: On line 12, you said, arose out of a pattern of domestic violence. Do you think the word pattern could be a point of contention that would have to be proven?

Rep. Wald: Yes, I would have no problem deleting "of a pattern", so that if it were the first time offense, the other spouse wouldn't be denied.

Tom Smith: Representing NAI. This bill deal with property casualty insurance. The second sentence refers to what we call the innocent coinsured rule. After reviewing the case logs throughout the jurisdiction, I felt that ND would fall the innocent coinsured rule. In other words, if one spouse does an intentional act that harms property that both won, the innocent spouse is entitled to recover. As to Chairman Berg's example, all of these policies have what's called a loss payable clause, so that when you go to a bank and get a mortgage, they're named on that policy. Even if both spouses burn the house down, the bank will still be paid. If there were an innocent spouse, that person would be paid.

Rep. Klein: If there were damage in the house, would the innocent spouse be able to regain half of that from the insurance?

Mr. Smith: If it was personal property, it would be 50/50. If the spouse would be considered to be the owner of the property, that would be covered.

Kent Olson: Representing the NDPIA. We Support the bill. It is a proactive endorsement for a societal problem that is facing the insurance industry. One thing we talked about was the spouse, but the definition of domestic abuse includes children or any others in the house hold. This bill would also protect them. We also like the bill from the agent's perspective because we don't want the domestic abuse to be a factor in rating up or denying a claim or underwriting sole.

Rep. Stefonowicz: When it says "it may not base any rating solely on whether an applicant or insured incurred bodily injury as a result" so it can be considered?

Mr. Olson: Yes, the same as any other underwriting criteria. What we don't want to happen is the insurance company to deny a claim just because of domestic abuse.

Susan Anderson: Legal counsel for NDID. See written testimony.

Bonnie Palecek: On behalf of the ND Council on Abused Women's Services. See written testimony.

Rep. Keiser: I'm having trouble understanding what your concern is with the wording.

Mrs. Palecek: If the wording in fact takes care of all of the eventualities then we would be satisfied.

Chairman Berg: Are there any cases in the last 12 months, that people who are the innocent coinsured lost property through this that you are aware of?

Mrs. Palecek: We have really have been trying to gather that evidence and it doesn't seem to be a ground swell of cases that have come forward. I would say the cases that I have heard about have not been related so much about property but more on health insurance.

Chairman Berg: So you to your knowledge there are no cases that this bill would change the outcome?

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1202

Hearing Date 01-19-99

Mrs. Palecek: There was one case that involved a soon to be divorced man and his then wife trashed his motorcycle. He was not able to recover the damages for that because it was in both their names.

End of tape 1 side B. Start tape 2 side A.

Rep. Keiser: On line nine, do you recommend removing the words “a crime involving”?

Mrs. Palecek: That was a difficult and confusing disparity for us because in ND there is not a separate crime of domestic violence. The definition is quite broad of the protection order process. All we need to prove is even a threat of bodily injury. So to say a crime involving domestic violence is somewhat confusing.

Richard Schlosser: of NDFU. I would just like to register some concerns about the language here. The prosecution aspect of it should stay in the bill to avoid insurance fraud. The term “a pattern of” needs to be removed.

Chairman Berg: Closed the hearing.

No action taken.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1202-1-25-99

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 01-25-99

Tape Number	Side A	Side B	Meter #
3	x		33.5 - 27.8
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: Committee discussion on HB 1202.

Amendments were proposed and explained.

Rep.Klein: Moved the amendments.

Rep. Severson: Second amendments.

Voice vote passed.

Rep. Keiser: Moved for a Do Pass as Amended.

Rep.Klein: Second motion.

Rep.Johnson: Carrier.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202**

Page 1, line 8, replace "incurred bodily injury as a result of" with "suffers from"

Page 1, line 9, remove "a crime involving"

Page 1, line 12, remove "a pattern of"

Renumber accordingly

Date: 1-25-99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1202

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken do pass as amended

Motion Made By Keiser Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux					
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Johnson

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1202: Industry, Business and Labor Committee (Rep. Berg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1202 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "incurred bodily injury as a result of" with "suffers from"

Page 1, line 9, remove "a crime involving"

Page 1, line 12, remove "a pattern of"

Renumber accordingly

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1202**


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1202

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date FEBRUARY 9, 1999

Tape Number	Side A	Side B	Meter #
2	x	x	2420-end, 0-
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1202. All senators were present.

Representative Wald testified in support of HB1202. His testimony is included.

Discussion took place.

Susan Anderson, Legal Council for the North Dakota Insurance Department, testified in support of HB1202. Senator Krebsbach asked her if there have been any claims where the innocent did not get taken care of. She said that as far as she knew there hasn't been any instances in North Dakota but there has been instances in other area of the country.

Bonnie Polocheck, Abused Women's Services, testified in support of HB1202. Senator Mathern asked why they can't fully support this bill. She said they just didn't like the word solely in there. She said this would never get used because there could always be another reason to deny the coverage.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Hb1202

Hearing Date February 9, 1999

Tom Smith, testified in support of HB1202. He felt that, if the word must was put the bill, there would be a large amount of fraud taking place.

Rosie Sand, on behalf of the Attorney General, testified in support of HB1202. She feels that these people are victims of crimes. She also said that she was concerned about people paying for the half of the damages that was caused.

Carry Baxter testified in support of HB1202.

Senator Mutch closed the hearing on HB1202.

Senator Sand motioned for a do pass committee recommendation on HB1202. Senator

Krebsbach seconded his motion. The motion carried with a 7-0-0 vote.

Senator Sand will carry the bill.

Date:  
Roll Call Vote #:

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1202**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By SAND Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment SAND

REPORT OF STANDING COMMITTEE (410)  
March 31, 1999 11:37 a.m.

Module No: SR-58-6095  
Carrier: Sand  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1202: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1202 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**HB 1202**

**HOUSE BILL NO. 1202  
TESTIMONY BEFORE THE HOUSE  
INDUSTRY, BUSINESS AND LABOR COMMITTEE**

**SUSAN J. ANDERSON  
LEGAL COUNSEL  
NORTH DAKOTA INSURANCE DEPARTMENT**

Good morning. My name is Susan Anderson and I am Legal Counsel for the North Dakota Insurance Department. I am here today to testify in support of House Bill No. 1202.

Although the Insurance Department supports the spirit of this bill and we think that it is a good first step, House Bill No. 1202 does raise some concerns and contains some limitations which may end up providing limited safeguards to victims of domestic violence.

First, the use of the terms "rating, underwriting, or claim handling decision" is somewhat vague. The Department would presume that the term "underwriting" would include "restricting or excluding coverage on" a policy, although it is not clear. Such an interpretation would prohibit an insurer from attaching a restrictive endorsement on the policy based upon domestic violence. Further, it is not clear to me whether "underwriting" would encompass canceling or terminating a policy based upon domestic violence.

Second, the bill uses the term "solely" in regards to the insurance company's prohibition on using the status of domestic violence. The term "solely" is a limiting term and coupled with other terms, which I will mention in a moment, seems to be unduly limiting in this context. The insurer cannot discriminate against victims of abuse only if the insured or applicant suffers "bodily injury as a result of a crime involving domestic abuse." It appears that House Bill No. 1202 would require a physical manifestation as a result of a crime. The use of the term "crime" seems to indicate some sort of finding as to the criminality of an act. These appear to be very burdensome hurdles that must be met before any of the above prohibitions take effect.

Further, the bill does address the "innocent co-insured" situation, where an individual suffers a loss and whose claim is denied based upon the intentional act provision of the policy. It appears that this bill would prohibit an insurer from denying the claim as long as the innocent co-insured did not cooperate or contribute to the loss and the loss arose out of a pattern of domestic violence and the perpetrator must be criminally prosecuted. The Department is pleased to see a provision protecting the innocent co-insured but we have some concerns over the requirements that must be met before the prohibition kicks in. It appears that before the prohibition takes effect, it must be established that the loss arose out of a pattern of domestic violence and the individual must be criminally prosecuted. Again, these are two very large hurdles that must be met before a victim of abuse is protected by this statute. Further, it is not clear whether this provision of this bill would cover an innocent co-insured that was in a dating relationship, for example, where the perpetrator is not a co-insured but an ex-boyfriend.

Again, the Department supports the spirit House Bill No. 1202 but realizes that there may be very strict limitations within this bill, which may in fact provide very little safeguards to victims of domestic abuse.



BISMARCK  
Abused Adult Resource Center  
222-8370  
BOTTINEAU  
Family Crisis Center  
228-2028  
DICKINSON  
Alternatives for  
Abused Families  
1-888-662-7378  
DICKINSON  
Domestic Violence and  
Rape Crisis Center  
225-4506  
ELLEDALE  
Kedish House  
349-4729  
FARGO  
Rape and Abuse Crisis Center  
800-344-7273  
FORT BERTHOLD RESERVATION  
Coalition Against  
Domestic Violence  
627-4171  
FORT YATES  
Tender Heart Against  
Domestic Violence  
854-3402  
GRAFTON  
Tri-County Crisis  
Intervention Center  
352-4242  
GRAND FORKS  
Community Violence  
Intervention Center  
755-5555  
JAMESTOWN  
S.A.F.E. Shelter  
888-353-7233  
McLEAN COUNTY  
McLean Family  
Resource Center  
800-657-8643  
MERCER COUNTY  
Women's Action and  
Resource Center  
873-2274  
MINOT  
Domestic Violence Crisis  
Center  
852-2258  
RANSOM COUNTY  
Abuse Resource Network  
683-5061  
STANLEY  
Domestic Violence Program,  
NW, ND  
628-3233  
VALLEY CITY  
Abused Persons Outreach  
Center  
842-5558  
WILLISTON  
Therapists Crisis Center  
642-2115  
WILLISTON  
Family Crisis Shelter  
572-0757

TESTIMONY ON HB 1202  
HOUSE INDUSTRY, BUSINESS, AND LABOR  
JANUARY 19, 1999

CHAIR BERG AND MEMBERS OF THE COMMITTEE:

MY NAME IS BONNIE PALECEK, AND I AM SPEAKING ON BEHALF OF THE NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES.

OUR COALITION IS COMPRISED OF 20 LOCAL, COMMUNITY-BASED DIRECT SERVICE PROVIDERS, AND WE HAVE BEEN FOLLOWING THE EVOLUTION OF NATIONAL GUIDELINES RELATING TO INSURANCE OF ALL KINDS FOR THE PAST SEVERAL YEARS. INCLUDED IN OUR RESEARCH HAS BEEN FOLLOWING THE DEVELOPMENT OF MODEL LAWS BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

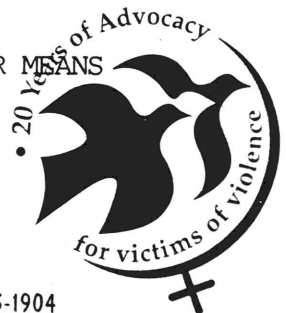
AS WE HAVE BEEN EDUCATING OURSELVES, WE HAVE COME TO LOOK FOR CERTAIN ELEMENTS NECESSARY TO PROVIDE THE PROTECTIONS NEEDED BY VICTIMS AND SERVICE PROVIDERS. AND SO ALTHOUGH WE ARE CERTAINLY IN SUPPORT OF HB 1202 AS FAR AS IT GOES, WE ARE HOPEFUL THAT THE COMMITTEE MAY CONSIDER BROADENING THE PROTECTIONS OFFERED HERE.

AS YOU CAN SEE BY THE CHART ON p. 9 OF THE DOCUMENT TITLED INSURANCE DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE, OVER 30 STATES HAVE ADOPTED SOME SORT OF ANTI-DISCRIMINATION LEGISLATION. NORTH DAKOTA IS SADLY MISSING FROM THE LIST, AND SO WE ARE ENCOURAGED THAT THIS LEGISLATIVE BODY IS LOOKING AT SEVERAL BILLS TO ADDRESS THIS VOID.

HAVING SAID THIS, WE ARE CONCERNED ABOUT THE FOLLOWING GAPS IN THE PROTECTIONS UNDER HB 1202:

- \*THE BILL ADDRESSES "ISSUING OR RENEWING" A POLICY, BUT SEEMS TO LEAVE THE DOOR OPEN FOR SETTING HIGHER PREMIUMS, OR CANCELLATION OR TERMINATION OF A POLICY;
- \*THE BILL DOES NOT SPECIFICALLY ADDRESS THE DIFFICULTY OF SOME SHELTERS TO OBTAIN INSURANCE BASED ON THEIR ASSOCIATION WITH VICTIMS;
- \*IT DOES NOT PROVIDE FOR CONFIDENTIALITY OF INFORMATION RELATING TO ABUSE THROUGH INSURANCE DATA BASES OR OTHER MEANS

North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota  
418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Toll Free 1-800-472-2911 • Fax: 255-1904



\*THE PROHIBITIONS AFFECT ONLY INSURANCE COMPANIES, NOT AGENTS,  
BROKERS, ADJUSTERS, ETC.

\*THERE ARE NO ENFORCEMENT MECHANISMS OR REMEDIES SPELLED OUT  
FOR THE VICTIMS OF SUCH DISCRIMINATION.

IN ADDITION, WE ARE CONCERNED ABOUT THE LIMITATIONS INVOKED BY RESTRICTING PROTECTIONS TO CASES INVOLVING BODILY INJURY ONLY. MANY CASES IN NORTH DAKOTA (ABOUT 20%) INVOLVE THE USE OF A DANGEROUS WEAPON AND TERRORIZING, WITH PERHAPS NO BODILY INJURY. PATTERNS OF EMOTIONAL OR PSYCHOLOGICAL ABUSE ARE LIKEWISE EXTREMELY DAMAGING, ALTHOUGH THEY ARE RARELY CHARGED AS A CRIME. LINES 12 AND 13 IMPLY THAT SOMEHOW A VICTIM WOULD HAVE TO PROVE BOTH A PATTERN OF SOME KIND (BODILY INJURY ONLY?) AND THE 'PERPETRATOR MUST HAVE BEEN CRIMINALLY PROSECUTED. THIS SEEMS A VERY HIGH BURDEN FOR VICTIMS TO MEET.

FINALLY, SINCE IT APPEARS THAT THE "MORTGAGOR OR OTHER SECURED INTEREST" IS PAID FIRST ACCORDING TO LINES 14 AND 15, THE BATTERER HAS TO TAKE NO RESPONSIBILITY FOR HIS OR HER ACTIONS.

IN CONCLUSION, WE APPLAUD THE BEGINNING OF A PROCESS OF PROTECTING VICTIMS OF DOMESTIC VIOLENCE AGAINST PROPERTY AND CASUALTY DISCRIMINATION. WE WOULD BE EVEN MORE ENCOURAGED IF THESE PROVISIONS WERE BROADENED AND CLARIFIED.

THANK YOU.

*Bonnie Palczak*

## CHAPTER 14-07.1 DOMESTIC VIOLENCE

### Section

- 14-07.1-01. Definitions.
- 14-07.1-02. Domestic violence protection order.
- 14-07.1-03. Temporary protection order - Copy to law enforcement agency.
- 14-07.1-03.1. Notification of stalking law.
- 14-07.1-04. Assistance of law enforcement officer in service or execution.
- 14-07.1-05. Right to apply for relief.
- 14-07.1-05.1. Appointment of guardian ad litem for minor.
- 14-07.1-06. Penalty for violation of a protection order.
- 14-07.1-07. Nonexclusive remedy.
- 14-07.1-08. Emergency relief.
- 14-07.1-09. Immunity from liability - Penalty for false reports.
- 14-07.1-10. Arrest procedures.
- 14-07.1-11. Arrest without warrant.
- 14-07.1-12. Reports.
- 14-07.1-13. Order prohibiting contact - Penalty.
- 14-07.1-14. Law enforcement guidelines and training.
- 14-07.1-15. Domestic violence prevention fund established.
- 14-07.1-16. Grants - Eligibility - Conditions - Limitation.
- 14-07.1-17. Duties of health officer.
- 14-07.1-18. Domestic violence or sexual assault program records - Confidentiality -  
Exceptions - Penalty.

### **14-07.1-01. Definitions.**

1. "Department" means the state department of health.
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.
3. "Domestic violence organization" means a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence.
4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Willfully" means willfully as defined in section 12.1-02-02.

**Source:** S.L. 1979, ch. 193, § 1; 1989, ch. 177, § 2; 1991, ch. 149, § 1; 1993, ch. 147, § 1; 1995, ch. 150, § 1; 1995, ch. 243, § 2.

## **Domestic Violence.**

### **- In General.**

By defining domestic violence to include violence directed at any "family or household member" the legislature intended any domestic violence to negatively impact the best interests of the children, and not be confined to circumstances in which a parent or child is the direct victim of the violence. *Anderson v. Hensrud*, 548 N.W.2d 410 (N.D. 1996).

The legislature clarified the degree of domestic violence, as defined in this section, required to invoke the presumption against child custody in section 14-09-06.2(1)(j), by its 1997 amendment to that subdivision. *Dinius v. Dinius*, 1997 ND 115, 564 N.W.2d 300 (1997).

### **- Found.**

Former husband's conduct constituted domestic violence; the former wife was placed in fear for her safety as a result of the former husband's phone calls and verbal statements, which caused her to lock the doors and windows and request extra police patrol and caused her to become nauseated. *Lovcik v. Ellingson*, 1997 ND 201, 569 N.W.2d 697 (1997).

### **- Not Excused.**

A trial court cannot dismiss violent behavior merely because it was instigated by non-violent behavior, or excuse instances of domestic violence by a parent perpetrated because the court found it was provoked by the other parent's actions. *Huesers v. Huesers*, 1997 ND 33, 560 N.W.2d 219 (1997).

## **DECISIONS UNDER PRIOR LAW.**

### **Forms of Abuse.**

Adult abuse is not limited to physical harm, bodily injury and assault or the imminent threat thereof, but includes all forms of abuse, including mental harm. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

In a proceeding under this chapter, consideration of abuse is not limited to the abuse against the complaining adult; abuse of the complaining adult is only one of the abuses that is within the contemplation of the adult abuse statute. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

### **Incest.**

Incest constitutes adult abuse and consent to such relationship by all parties involved provides no defense. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

### **Question of Fact.**

Whether or not there was adult abuse directed against the complaining adult is an issue of fact to be determined by the trier of fact. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

### **Collateral References.**

Ineffective assistance of counsel: battered spouse syndrome as defense to homicide or other criminal offense,, 11 A.L.R.5th 871.

Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children,, 51 A.L.R.5th 241.

### **14-07.1-02. Domestic violence protection order.**

1. An action for a protection order commenced by a verified application alleging the

existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.

2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.

3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.

4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:

a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.

b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.

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

d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.

e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys' fees and costs.

f. Awarding temporary use of personal property, including motor vehicles, to either party.

g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides.

5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.

6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

7. No order or agreement under this section affects title to any real property in any matter.

8. The petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.

**Source:** S.L. 1979, ch. 193, § 2; 1981, ch. 167, § 1; 1985, ch. 194, § 1; 1987, ch. 177, § 1;

1989, ch. 177, § 3; 1991, ch. 149, § 2; 1991, ch. 326, § 52; 1995, ch. 150, § 2; 1997, ch. 148, § 1.

**Effective Date:** The 1997 amendment of this section by section 1 of chapter 148, S.L. 1997 became effective August 1, 1997.

### **In General.**

A domestic violence protection order under the "Adult Abuse" statutes is a civil action primarily for injunctive relief, in which the party who has the burden of proof must establish the essential elements of the claim by a preponderance of the evidence. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

A domestic violence proceeding is not a plenary action that requires a full-blown trial; rather, this section creates a special summary proceeding and directs a motion hearing noticed by order of the court. *Sandbeck v. Rockwell*, 524 N.W.2d 846 (N.D. 1994).

### **Applicability.**

#### **- In General.**

A permanent domestic violence protection order is appealable. *Selland v. Selland*, 494 N.W.2d 367 (N.D. 1992).

#### **- Children.**

This section has been liberally construed to protect victims other than adults; thus, a child could be protected if the requisite showing of abuse was made. *Brandt v. Brandt*, 523 N.W.2d 264 (N.D. 1994).

Where mother appealed from an order allowing her former husband supervised visitation with their minor child, contending her former husband sexually abused their child, the trial court found that the evidence did not establish abuse by the former husband and mother was not entitled to protection order. *Brandt v. Brandt*, 523 N.W.2d 264 (N.D. 1994).

### **Divorce Decree.**

A protection order was not an impermissible modification of a divorce decree where the decree granted father certain visitation rights whereby he would give mother 24 hours advance notice of his request for visitation, but through the granting of the protection order would be unable to contact mother directly to arrange visitation and would have to go through a third party (his parents) to pick up and deliver the children. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

### **Evidence.**

#### **- Admissible.**

In an action to determine whether to issue a domestic violence protection order, evidence of previous domestic violence is relevant and properly considered. *Lovcik v. Ellingson*, 1997 ND 201, 569 N.W.2d 697 (1997).

#### **- Held Sufficient.**

Former girlfriend's evidence justified protection order for domestic violence protection from former boyfriend where he mistreated and threatened her. *Sandbeck v. Rockwell*, 524 N.W.2d 846 (N.D. 1994).

The trial court did not err in issuing a domestic violence protection order where the court specifically found that the former wife was placed in fear for her safety as a result of the former husband's phone calls and verbal statements and that her fear was reasonable based on her past experience with her former husband. *Lovcik v. Ellingson*, 1997 ND 201, 569 N.W.2d 697 (1997).

### **Failure to Present Testimony.**

Where plaintiff deliberately decided not to present testimony in a protection order hearing and did not move for a continuance until after the court indicated its decision, and the extensive affidavits and briefs

gave the trial judge sufficient bases upon which to decide the case, thereby making an extension for the purpose of admitting evidence unnecessary, the trial judge's denial of the motion for continuance was proper. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

### **Hearing.**

#### **- Adequate.**

Former boyfriend accused of domestic violence had the "full hearing" required by the statute and applicable rules for entering a protection order; although the trial court had discretion under the rules to expand the hearing by allowing more evidence or testimony, if persuaded that it was necessary for the particular dispute, considering the narrow subject of the private dispute between only two people and pro se boyfriend's failure to follow the rules of evidence, the brevity of the hearing was understandable. *Sandbeck v. Rockwell*, 524 N.W.2d 846 (N.D. 1994).

### **Proper Grant of Order.**

Court was correct to grant protection order where there was a history of visitation violations and allegations of abuse. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

### **Service of Protective Order.**

State's failure to comply with section 14-07.1-03.1, by failing to include a copy of section 12.1-17-07.1 with an order issued under this section or section 14-07.1-03, does not deprive the trial court of jurisdiction to hear the charge against one accused of violating a domestic violence protection order; however dismissal might be appropriate if actual prejudice is shown. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

Failure of order issued pursuant to this section to include or have attached a copy of section 12.1-14-07.1 was not an obvious error which would deprive the trial court of jurisdiction to try defendant for a violation of this section or which defendant could raise for the first time on appeal under N.D.R.Crim.P. 52(b). *State v. Keller*, 550 N.W.2d 411 (N.D. 1996).

### **Waivable Right to Present Testimony.**

The right to present testimony at a hearing for a protection order is waivable. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

### **Violation.**

Where defendant followed his former wife to her place of employment and attempted to open the door, he "communicated" with her, and he violated protection order that directed defendant to have no contact with former wife. *State v. Zurmiller*, 544 N.W.2d 139 (N.D. 1996).

## **DECISIONS UNDER PRIOR LAW.**

### **Issuance of Protective Order.**

Consent of an abused adult is not required for issuance of a protective order provided that a spouse or family member is the applicant for such order. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

### **Physical or Mental Examinations.**

Rule 35, North Dakota Rules of Civil Procedure, concerning trial court's authority to order a party to submit to a physical or mental examination, is applicable to an adult abuse proceeding under this chapter. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

### **Relief Available.**

The restraining of action which is prohibited by the penal laws is specifically authorized when the

activity constitutes adult abuse. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

#### **14-07.1-03. Temporary protection order - Copy to law enforcement agency.**

1. If an application under section 14-07.1-02 alleges an immediate and present danger of domestic violence to the applicant, based upon an allegation of a recent incident of actual domestic violence, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.

2. An ex parte temporary protection order may include:

a. Restraining any party from having contact with or committing acts of domestic violence on another person.

b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.

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

d. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or the chief of police, or the chief's designee, of the city in which the respondent resides.

3. An ex parte temporary protection order remains in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court.

4. A full hearing as provided by section 14-07.1-02 must be set for not later than fourteen days from the issuance of the temporary order. The respondent must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.

5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.

6. Fees for filing and service of process may not be assessed to the petitioner for any proceeding seeking relief under chapter 14-07.1.

**Source:** S.L. 1979, ch. 193, § 3; 1981, ch. 167, § 2; 1985, ch. 194, § 2; 1989, ch. 177, § 4; 1991, ch. 149, § 3; 1995, ch. 150, § 3; 1997, ch. 148, § 2.

**Effective Date:** The 1997 amendment of this section by section 2 of chapter 148, S.L. 1997 became effective August 1, 1997.

#### **Service of Protective Order.**

State's failure to comply with section 14-07.1-03.1, by failing to include a copy of section 12.1-17-07.1 with an order issued under section 14-07.1-02 or this section, does not deprive the trial court of



jurisdiction to hear the charge against one accused of violating a domestic violence protection order; however dismissal might be appropriate if actual prejudice is shown. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

#### **14-07.1-03.1. Notification of stalking law.**

When an order is issued under section 14-07.1-02 or 14-07.1-03, the order must include or have attached to it a copy of section 12.1-17-07.1.

**Source:** S.L. 1993, ch. 120, § 2.

#### **Compliance.**

State's failure to comply with this section, by failing to include a copy of section 12.1-17-07.1 with an order issued under sections 14-07.1-02 or 14-07.1-03, does not deprive the trial court of jurisdiction to hear the charge against one accused of violating a domestic violence protection order; however dismissal might be appropriate if actual prejudice is shown. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

Failure of order issued pursuant to section 14-07.1-02 to include or have attached a copy of section 12.1-14-07.1 was not an obvious error which would deprive the trial court of jurisdiction to try defendant for a violation of section 14-07.1-02 or which defendant could raise for the first time on appeal under N.D.R.Crim.P. 52(b). *State v. Keller*, 550 N.W.2d 411 (N.D. 1996).

#### **Purpose.**

This section is intended to protect potential victims by emphasizing to the restrained party the potential consequences of violating a protection order. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

#### **14-07.1-04. Assistance of law enforcement officer in service or execution.**

When an order is issued upon request of the applicant under section 14-07.1-02 or 14-07.1-03, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to a domestic violence shelter care facility.

**Source:** S.L. 1979, ch. 193, § 4; 1989, ch. 177, § 5.

#### **14-07.1-05. Right to apply for relief.**

A person's right to apply for relief under section 14-07.1-02 or 14-07.1-03 is not affected if the person leaves the residence or dwelling to avoid domestic violence. The court may not require security or bond from any party unless the court deems it necessary in exceptional cases.

**Source:** S.L. 1979, ch. 193, § 5; 1989, ch. 177, § 6.

#### **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 before the full hearing. The role of the guardian ad litem 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 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.

**Source:** S.L. 1987, ch. 178, § 1; 1995, ch. 151, § 1.

#### **14-07.1-06. Penalty for violation of a protection order.**

Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony subject to the penalties therefor.

**Source:** S.L. 1979, ch. 193, § 6; 1983, ch. 177, § 1; 1985, ch. 82, § 25; 1987, ch. 179, § 1; 1989, ch. 177, § 7; 1993, ch. 89, § 4; 1993, ch. 147, § 2.

**Cross-References.** Offenders subject to arrest without warrant, see § 29-06-15.

#### **Service.**

##### **- Evidence.**

There was sufficient evidence to find that an amended adult abuse protection order was, in fact, mailed, and therefore was delivered, or executed, or that defendant had notice of the geographical restriction included in the amended order, especially since there was no evidence of lack of receipt. *State v. Wolff*, 512 N.W.2d 670 (N.D. 1994).

There was sufficient evidence in the record to support the jury's finding of service where there was an affidavit of mailing, and the affiant personally testified in court. *State v. Wolff*, 512 N.W.2d 670 (N.D. 1994).

##### **- Jurisdiction.**

State's failure to comply with section 14-07.1-03.1, by failing to include a copy of section 12.1-17-07.1 with an order issued under section 14-07.1-02 or 14-07.1-03, does not deprive the trial court of jurisdiction to hear the charge against one accused of violating a domestic violence protection order; however dismissal might be appropriate if actual prejudice is shown. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

##### **- Legal Issue.**

Proof of the element of service of an adult abuse protection order is a legal, rather than a factual, consideration. *State v. Wolff*, 512 N.W.2d 670 (N.D. 1994).

#### **14-07.1-07. Nonexclusive remedy.**

Any proceeding under sections 14-07.1-01 through 14-07.1-08 is in addition to any other civil or criminal remedies.

**Source:** S.L. 1979, ch. 193, § 7; 1989, ch. 177, § 8.

#### **14-07.1-08. Emergency relief.**

When the court is unavailable an application may be filed before a local magistrate, as

defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from domestic violence. Immediate and present danger of domestic violence to the applicant or others constitutes good cause for purposes of this section. Any order issued under this section expires seventy-two hours after its issuance, unless continued by the court, or the local magistrate in the event of continuing unavailability of the court. At that time, the applicant may seek a temporary order from the court. Any order issued under this section and any documentation in support of the order must be immediately certified to the court. The certification to the court has the effect of commencing proceedings under section 14-07.1-02.

**Source:** S.L. 1979, ch. 193, § 8; 1987, ch. 177, § 2; 1989, ch. 177, § 9.

#### **Certification of Order to District Court.**

This section requires that a protection order issued by a municipal judge be immediately forwarded to district court so that a court of general jurisdiction has opportunity to review order when that court is again available; certification is a procedural step subsequent to jurisdictional requirements, and failure to certify does not result in a loss of jurisdiction by a municipal judge who has satisfied jurisdictional requirements. *Patten v. Beauchamp*, 599 F. Supp. 288 (D.N.D. 1984).

#### **Immunity from Civil Liability.**

Municipal court judge was immune from civil liability with regard to issuance of a protection order where order was issued in accordance with jurisdictional requirements of this section; failure to certify order to district court did not result in a loss of subject matter jurisdiction. *Patten v. Beauchamp*, 599 F. Supp. 288 (D.N.D. 1984).

**14-07.1-09. Immunity from liability - Penalty for false reports. Repealed by S.L. 1989, ch. 589, § 16.**

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

1. If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic violence, 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.

**Source:** S.L. 1989, ch. 177, § 10; 1991, ch. 149, § 4; 1993, ch. 148, § 1; 1995, ch. 150, § 4.

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

1. A law enforcement officer shall arrest a person without a warrant if 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.

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, 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 subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

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.

**Source:** S.L. 1989, ch. 177, § 11; 1993, ch. 147, § 3; 1995, ch. 150, § 5.

**Cross-References.** Offenders subject to arrest without warrant, see § 29-06-15.

#### **14-07.1-12. Reports.**

A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports.

**Source:** S.L. 1989, ch. 177, § 12.

#### **14-07.1-13. Order prohibiting contact - Penalty.**

1. If a person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial, the court authorizing the release of the person shall consider and may issue, if there is no outstanding restraining or protection order prohibiting the person from having contact with the victim, an order prohibiting the person from having contact with the victim. The order must contain the court's directives and must inform the person that any violation of the order constitutes a criminal offense. The court shall provide a copy of the order to the victim. The court shall determine at the time of the person's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section prior to the time the person is charged, the order expires at the person's arraignment or within seventy-two hours of issuance if charges against the person are not filed.

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 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.

3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order on or before the next business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants. The order is enforceable in any jurisdiction in this state.

4. A person who willfully violates a court order issued under this section is guilty of a class A misdemeanor.

5. A law enforcement officer shall arrest a person without a warrant if the officer determines

there is probable cause that the person has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer. A law enforcement officer who acts in good faith on probable cause and without malice is immune from any civil or criminal liability for making an arrest under this subsection.

**Source:** S.L. 1989, ch. 177, § 13; 1995, ch. 150, § 6; 1997, ch. 148, § 3.

**Effective Date:** The 1997 amendment of this section by section 3 of chapter 148, S.L. 1997 became effective August 1, 1997.

#### **14-07.1-14. Law enforcement guidelines and training.**

1. Every law enforcement agency shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by law enforcement officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out sections 14-07.1-02 through 14-07.1-14.

2. The peace officers standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for law enforcement officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

**Source:** S.L. 1989, ch. 177, § 14.

#### **14-07.1-15. Domestic violence prevention fund established.**

The domestic violence prevention fund is a special fund in the state treasury. The moneys accumulated in the fund are allocated to the department for distribution as provided by this chapter and within the limits of legislative appropriation. The fund is not subject to section 54-44.1-11.

**Source:** S.L. 1989, ch. 177, § 15.

**Cross-References.** Funds from supplemental marriage license fee, see § 14-03-22.

#### **14-07.1-16. Grants - Eligibility - Conditions - Limitation.**

The department shall administer moneys in the domestic violence prevention fund for grants to domestic violence organizations as defined in section 14-07.1-01. An eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind. Grants are renewable within the limits of legislative appropriation, if the applicant continues to meet the eligibility criteria established by this section and rules adopted by the department. Grant application deadlines may be included in any rules adopted to implement this section.

**Source:** S.L. 1989, ch. 177, § 16; 1993, ch. 147, § 4.

#### **14-07.1-17. Duties of health officer.**

The health officer shall:

1. Respond to all applicants within sixty days after the deadline for receipt of applications,

whether or not the applicant is eligible for funds.

2. Ensure that no more than ten percent of the moneys allocated to the domestic violence prevention fund in any biennium is expended for departmental administration of the grant program.

3. Distribute grants to eligible applicants in accordance with the purposes of sections 14-07.1-15 through 14-07.1-18.

**Source:** S.L. 1989, ch. 177, § 17.

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

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:

a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;

b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and

c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.

2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:

a. A client consents to the release of information that relates only to that client or the client's dependents;

b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;

c. A court of competent jurisdiction orders the disclosure after an in-camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or

d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.

3. Any person who violates this section is guilty of an infraction.

**Source:** S.L. 1989, ch. 177, § 18; 1989 ch. 179, § 1; 1993, ch. 149, § 1.

**Note:** Section 14-07.2-06 was amended by section 1 of chapter 179, S.L. 1989, and repealed by section 21 of chapter 177, S.L. 1989. Pursuant to section 1-02-09.1, section 14-07.2-06 was treated as repealed; however, the program reference changes made by section 1 of chapter 179 were incorporated into this section.

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- c. From that part of a "residence premises" rented by an "insured" to other than an "insured."

This peril does not include loss caused by theft that occurs off the "residence premises" of:

- a. Property while at any other residence owned by, rented to, or occupied by an "insured," except while an "insured" is temporarily living there. Property of a student who is an "insured" is covered while at a residence away from home if the student has been there at any time during the 45 days immediately before the loss;
- b. Watercraft, and their furnishings, equipment and outboard engines or motors; or
- c. Trailers and campers.

#### 10. Falling objects.

This peril does not include loss to property contained in a building unless the roof or an outside wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. Weight of ice, snow or sleet which causes damage to property contained in a building.

12. Accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

This peril does not include loss:

- a. To the system or appliance from which the water or steam escaped;

- b. Caused by or resulting from freezing except as provided in the peril of freezing below; or
- c. On the "residence premises" caused by accidental discharge or overflow which occurs off the "residence premises."

In this peril, a plumbing system does not include a sump, sump pump or related equipment.

13. Sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

We do not cover loss caused by or resulting from freezing under this peril.

14. Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance.

This peril does not include loss on the "residence premises" while the dwelling is unoccupied, unless you have used reasonable care to:

- a. Maintain heat in the building; or
- b. Shut off the water supply and drain the system and appliances of water.

15. Sudden and accidental damage from artificially generated electrical current.

This peril does not include loss to a tube, transistor or similar electronic component.

16. Volcanic eruption other than loss caused by earthquake, land shock waves or tremors.

### SECTION I - EXCLUSIONS

1. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

- a. Ordinance or Law, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided under this policy.

- b. Earth Movement, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; landslide; mine subsidence; mudflow; earth sinking, rising or shifting; unless direct loss by:

- (1) Fire;
- (2) Explosion; or

- (3) Breakage of glass or safety glazing material which is part of a building, storm door or storm window;

ensues and then we will pay only for the ensuing loss.

This exclusion does not apply to loss by theft.

- c. Water Damage, meaning:

- (1) Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- (2) Water which backs up through sewers or drains or which overflows from a sump; or

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- (3) Water below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

Direct loss by fire, explosion or theft resulting from water damage is covered.

- d. **Power Failure**, meaning the failure of power or other utility service if the failure takes place off the "residence premises." But, if a Peril Insured Against ensues on the "residence premises," we will pay only for that ensuing loss.
- e. **Neglect**, meaning neglect of the "insured" to use all reasonable means to save and preserve property at and after the time of a loss.
- f. **War**, including the following and any consequence of any of the following:
- (1) Undeclared war, civil war, insurrection, rebellion or revolution;
  - (2) Warlike act by a military force or military personnel; or
  - (3) Destruction, seizure or use for a military purpose.
- Discharge of a nuclear weapon will be deemed a warlike act even if accidental.
- g. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of SECTION I - CONDITIONS.

**h. Intentional Loss**, meaning any loss arising out of any act committed:

- (1) By or at the direction of an "insured"; and
- (2) With the intent to cause a loss.

2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

- a. **Weather conditions**. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;
- b. **Acts or decisions**, including the failure to act or decide, of any person, group, organization or governmental body;
- c. **Faulty, inadequate or defective**:
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance;
 of part or all of any property whether on or off the "residence premises."

## SECTION I - CONDITIONS

1. **Insurable Interest and Limit of Liability**. Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:

- a. To the "insured" for more than the amount of the "insured's" interest at the time of loss; or
- b. For more than the applicable limit of liability.

2. **Your Duties After Loss**. In case of a loss to covered property, you must see that the following are done:

- a. Give prompt notice to us or our agent;
- b. Notify the police in case of loss by theft;
- c. Notify the credit card or fund transfer card company in case of loss under Credit Card or Fund Transfer Card coverage;
- d. Protect the property from further damage. If repairs to the property are required, you must:

- (1) Make reasonable and necessary repairs to protect the property; and
- (2) Keep an accurate record of repair expenses;

- e. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;

- f. As often as we reasonably require:

- (1) Show the damaged property;
- (2) Provide us with records and documents we request and permit us to make copies; and
- (3) Submit to examination under oath, while not in the presence of any other "insured," and sign the same;