

DOMESTIC RELATIONS AND PERSONS

CHAPTER 143

HOUSE BILL NO. 1478

(Representatives Boehm, Kerzman, Sandvig)
(Senator Wanzek)

INFORMATION PROVIDED TO PREGNANT WOMEN

AN ACT to amend and reenact subdivision b of subsection 1 of section 14-02.1-02.1 of the North Dakota Century Code, relating to information to be provided to pregnant women.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 14-02.1-02.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 144

SENATE BILL NO. 2181

(Senators Klein, O'Connell, Robinson)
(Representatives Murphy, Sandvig)

GOVERNMENTAL CONTRACT DISCRIMINATION PROHIBITED

AN ACT to prohibit governmental discrimination in contracts and programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Discrimination in governmental contracts and programs prohibited. A governmental entity may not discriminate against any health care institution or any private agency in any grant, contract, or program because of the institution's or agency's refusal to permit, perform, assist, counsel, or participate in any manner in any health care service that violates the institution's or agency's written religious or moral policies.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 145

SENATE BILL NO. 2230

(Senators Christmann, Wanzek, Watne)
(Representatives Kerzman, Nelson, Sandvig)

RECOGNITION OF FOREIGN MARRIAGES

AN ACT to amend and reenact sections 14-03-01 and 14-03-08 of the North Dakota Century Code, relating to the definition of marriage and the recognition of a foreign marriage; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-01 of the North Dakota Century Code is amended and reenacted as follows:

14-03-01. What constitutes marriage - Spouse defined. Marriage is a personal relation arising out of a civil contract ~~between a male one man and a female one woman~~ to which the consent of the parties is essential. The marriage relation may be entered into, maintained, annulled, or dissolved only as provided by law. A spouse refers only to a person of the opposite sex who is a husband or a wife.

SECTION 2. AMENDMENT. Section 14-03-08 of the North Dakota Century Code is amended and reenacted as follows:

14-03-08. Foreign marriages recognized - Exception. ~~All~~ Except when residents of this state contract a marriage in another state which is prohibited under the laws of this state, all marriages contracted outside of this state, which are valid according to the laws of the state or country where contracted, are valid in this state. This section does not apply when residents of this state contract a marriage in another state which is prohibited under the laws of North Dakota. This section applies only to a marriage contracted in another state or country which is between one man and one woman as husband and wife.

SECTION 3. EFFECTIVE DATE. If the legislature of another state enacts a law under which a marriage between two individuals, other than between one man and one woman, is a valid marriage in that state or the highest court of another state holds that under the law of that state a marriage between two individuals, other than between one man and one woman, is a valid marriage, the governor of this state shall certify that fact to the legislative council. The certification must include the effective date of the other state's legislation or the date of the court decision. Sections 1 and 2 of this Act are effective as of the earlier of the effective date of that law or the date of that decision.

Approved March 25, 1997
Filed March 25, 1997

CHAPTER 146

SENATE BILL NO. 2359

(Senators Robinson, Nalewaja, St. Aubyn)
(Representatives Gerntholz, Sabby)

MARRIAGE SOLEMNIZATION

AN ACT to amend and reenact section 14-03-09 of the North Dakota Century Code, relating to the persons who may solemnize a marriage; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 14-03-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

Approved April 4, 1997
Filed April 4, 1997

¹ Section 14-03-09 was also amended by section 3 of Senate Bill No. 2210, chapter 105.

CHAPTER 147

SENATE BILL NO. 2235

(Senators W. Stenehjem, Traynor, Watne)
(Representatives Kretschmar, Murphy, Stenehjem)

DOMESTIC VIOLENCE IN CUSTODY PROCEEDINGS

AN ACT to amend and reenact subsections 3 and 5 of section 14-05-22 and subdivision j of subsection 1 of section 14-09-06.2 of the North Dakota Century Code, relating to the effect of domestic violence on visitation rights and child custody proceedings; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 14-05-22 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.
5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

SECTION 2. AMENDMENT. Subdivision j of subsection 1 of section 14-09-06.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this ~~evidence~~ combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or

visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

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

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 148

SENATE BILL NO. 2266

(Senators W. Stenehjem, Watne)
(Representatives Delmore, Hawken, Kretschmar)

DOMESTIC VIOLENCE ARREST AND PROTECTION ORDER

AN ACT to create and enact a new subsection to section 14-07.1-13 of the North Dakota Century Code, relating to domestic violence arrest procedures; and to amend and reenact subsections 4 and 8 of section 14-07.1-02, subsection 2 of section 14-07.1-03, and subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to domestic violence protection orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 8 of section 14-07.1-02 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Subsection 2 of section 14-07.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An ex parte temporary protection order may include:
 - a. Restraining any party from having contact with or committing acts of domestic violence on another person.
 - b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - 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.

SECTION 3. A new subsection to section 14-07.1-13 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

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.

SECTION 4. AMENDMENT. Subsection 1 of section 29-06-15 of the North Dakota Century Code is amended and reenacted as follows:

1. A law enforcement officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. For the offense of violating a protection order under section 14-07.1-06, an order prohibiting contact under section 14-07.1-13, or for an assault involving domestic violence pursuant to under section 14-07.1-11.

Approved March 26, 1997

Filed March 27, 1997

CHAPTER 149

SENATE BILL NO. 2167

(Senators W. Stenehjem, C. Nelson)
(Representatives Kretschmar, Mahoney, Stenehjem)

POSTJUDGMENT CUSTODY MODIFICATION MOTIONS

AN ACT to create and enact section 14-09-06.6 of the North Dakota Century Code, relating to motions for postjudgment custody modification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 14-09-06.6 of the North Dakota Century Code is created and enacted as follows:

14-09-06.6. Limitations on postjudgment custody modifications.

1. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than two years after the date of entry of an order establishing custody, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 3.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
 - a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.
4. A party seeking modification of a custody order shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. If a prima facie case is established, the court shall set a date for an evidentiary hearing.
5. The court may not modify a prior custody order within the two-year period following the date of entry of an order establishing custody unless the court finds the modification is necessary to serve the best interest of the child and:

- a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.
6. The court may modify a prior custody order after the two-year period following the date of entry of an order establishing custody if the court finds:
 - a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
 - b. The modification is necessary to serve the best interest of the child.
 7. The court may modify a prior custody order at any time if the court finds a stipulated agreement by the parties to modify the custody is in the best interest of the child.
 8. Upon a motion to modify custody under this section, the burden of proof is on the moving party.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 150**SENATE BILL NO. 2280**

(Senator W. Stenehjem)

CHILD SUPPORT INCOME WITHHOLDING ORDERS

AN ACT to amend and reenact section 14-09-09.18 of the North Dakota Century Code, relating to child support income withholding orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-09.18 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.18. Interstate income withholding - Initiation by this state to other state. On application of a resident of this state, an obligee or an obligor of a support order issued by this state, or an agency to which an obligee has assigned support rights, the public authority shall promptly request the child support enforcement agency of another state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The public authority shall make that request within twenty days of the later of the date income withholding is determined appropriate or the date of receipt of any information necessary to carry out withholding. The public authority shall compile and transmit to the child support agency of the other state all documentation required to enter an order for this purpose. The public authority shall also transmit to the child support agency certified copies of any subsequent modifications of the support order. If the public authority receives notice that the obligor is contesting the income withholding in another state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 151**SENATE BILL NO. 2357**

(Senators DeMers, C. Nelson)
(Representative Jensen)

VISITATION INTERFERENCE

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to the interference with visitation.

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:

Interference with visitation - Attorney's fees. In any proceeding where child visitation is properly in dispute between the parents of a minor child, the court shall award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the minor child.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 152

HOUSE BILL NO. 1093

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM INTERSTATE FAMILY SUPPORT ACT

AN ACT to create and enact sections 14-12.2-33.1, 14-12.2-33.2, 14-12.2-33.3, 14-12.2-33.4, 14-12.2-33.5, 14-12.2-46.1, and 14-12.2-46.2 of the North Dakota Century Code, relating to the Uniform Interstate Family Support Act; to amend and reenact subsections 6, 7, 16, 19, and 20 of section 14-12.2-01, sections 14-12.2-07, 14-12.2-08, 14-12.2-10, 14-12.2-16, subsections 1 and 5 of section 14-12.2-17, section 14-12.2-18, subsection 2 of section 14-12.2-19, sections 14-12.2-33, 14-12.2-39, subsections 1 and 3 of section 14-12.2-40, sections 14-12.2-45, 14-12.2-46, and 14-12.2-47 of the North Dakota Century Code, relating to the Uniform Interstate Family Support Act; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6, 7, 16, 19, and 20 of section 14-12.2-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. "Income-withholding order" means an order or other legal process directed to an obligor's employer or income payer ~~payor~~, as defined by section 14-09-09.10, to withhold support from the income of the obligor.
7. "Initiating state" means a state ~~in~~ from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure 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~~.
16. "Responding state" means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
19. "State" means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "~~state~~" includes ~~an~~:
 - a. An Indian tribe; and includes a
 - b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

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~~ To locate obligors or their assets.

SECTION 2. AMENDMENT. Section 14-12.2-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~¶ A tribunal of this state may exercise jurisdiction to establish a support order 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. ~~¶ A tribunal of this state may not exercise jurisdiction to establish a support order 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.

SECTION 3. AMENDMENT. Section 14-12.2-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ all of the parties who are individuals have filed written consent ~~consents~~ 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 the Uniform Interstate Family Support Act or 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 the Uniform Interstate Family Support Act or 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 the Uniform Interstate Family Support Act or 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.

SECTION 4. AMENDMENT. Section 14-12.2-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.
2. If a proceeding is brought under this chapter, and ~~one~~ two or more child support orders have been issued ~~in~~ by tribunals of this state or another

state with regard to ~~an~~ the same 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 controls and must be so recognized.~~
 - e. b. ~~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 controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.~~
 - e. c. ~~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~~ having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.~~
3. If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under subsection 2. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.
- ~~2.~~ 4. The tribunal that ~~has~~ issued ~~an~~ the controlling order ~~recognized~~ under subsection 1, 2, or 3 is the tribunal ~~having~~ that has continuing, exclusive jurisdiction under section 14-12.2-08.
 5. A tribunal of this state which determines by order the identity of the controlling order under subdivision a or b of subsection 2 or which issues a new controlling order under subdivision c of subsection 2 shall state in that order the basis upon which the tribunal made its determination.
 6. Within thirty days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that had issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

SECTION 5. AMENDMENT. Section 14-12.2-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-16. (304) Duties of initiating tribunal.

1. 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:
 4. a. To the responding tribunal or appropriate support enforcement agency in the responding state; or
 2. b. 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~~ they be forwarded to the appropriate tribunal and that receipt be acknowledged.
2. If a responding state has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

SECTION 6. AMENDMENT. Subsections 1 and 5 of section 14-12.2-17 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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.
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.

SECTION 7. AMENDMENT. Section 14-12.2-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 8. AMENDMENT. Subsection 2 of section 14-12.2-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, Sundays, and legal holidays, 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, Sundays, and legal holidays, 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.

SECTION 9. AMENDMENT. Section 14-12.2-33 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-33. (501) ~~Recognition~~ Employer's receipt 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 person or entity defined as the obligor's employer under section 14-09-09.10 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.~~

SECTION 10. Sections 14-12.2-33.1, 14-12.2-33.2, 14-12.2-33.3, 14-12.2-33.4, and 14-12.2-33.5 of the North Dakota Century Code are created and enacted as follows:

14-12.2-33.1. (502) Employer's compliance with income-withholding order of another state.

1. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.
2. The employer shall 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.
3. Except as otherwise provided by subsection 4 and section 14-12.2-33.2, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:
 - a. The duration and amount of periodic payments of current child support, stated as a sum certain;
 - b. The person or agency designated to receive payments and the address to which the payments are to be forwarded;
 - c. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
 - d. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and
 - e. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.
4. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:
 - a. The employer's fee for processing an income-withholding order;
 - b. The maximum amount permitted to be withheld from the obligor's income; and
 - c. The times within which the employer must implement the withholding order and forward the child support payment.

14-12.2-33.2. (503) Compliance with multiple income-withholding orders. If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

14-12.2-33.3. (504) Immunity from civil liability. An employer who complies with an income-withholding order issued in another state in accordance with this chapter is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

14-12.2-33.4. (505) Penalties for noncompliance. An employer who willfully fails to comply with an income-withholding order issued by another state and

received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

14-12.2-33.5. (506) Contest by obligor.

1. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this 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.
2. The obligor shall give notice of the contest to:
 - a. A support enforcement agency providing services to the obligee;
 - b. Each employer that has directly received an income-withholding order; and
 - c. The person or agency designated to receive payments in the income-withholding order or if no person or agency is designated, to the obligee.

SECTION 11. AMENDMENT. Section 14-12.2-39 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 pursuant to the income-withholding requirements of chapter 14-09.

SECTION 12. AMENDMENT. Subsections 1 and 3 of section 14-12.2-40 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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.
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.

SECTION 13. AMENDMENT. Section 14-12.2-45 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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; section 14-12.2-46.1 does not apply and 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~~ The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the individual parties who are individuals have filed a written consent consents in the issuing tribunal providing that for a tribunal of this state may to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under the Uniform Interstate Family Support Act, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support 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. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section 14-12.2-10 establishes the aspects of the support order which are nonmodifiable.
4. On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of having 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.~~

SECTION 14. AMENDMENT. Section 14-12.2-46 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 the Uniform Interstate Family Support Act or 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.

SECTION 15. Sections 14-12.2-46.1 and 14-12.2-46.2 of the North Dakota Century Code are created and enacted as follows:

14-12.2-46.1. (613) Jurisdiction to modify child support order of another state when individual parties reside in this state.

1. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.
2. A tribunal of this state exercising jurisdiction under this section shall apply the provisions of sections 14-12.2-01 through 14-12.2-12, sections 14-12.2-35 through 14-12.2-46.2, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 14-12.2-13 through 14-12.2-34 and sections 14-12.2-47, 14-12.2-48, and 14-12.2-49 do not apply.

14-12.2-46.2. (614) Notice to issuing tribunal of modification. 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 that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

SECTION 16. AMENDMENT. Section 14-12.2-47 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 or procedure 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, and the rules of this state on choice of law.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Chapter 14-12.2 must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the chapter among states enacting it.

SECTION 18. SHORT TITLE. Chapter 14-12.2 may be cited as the Uniform Interstate Family Support Act.

SECTION 19. SEVERABILITY CLAUSE. If any provision of chapter 14-12.2 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

Approved March 26, 1997
Filed March 26, 1997

CHAPTER 153**SENATE BILL NO. 2281**

(Senator W. Stenehjem)

PATERNITY PROCEEDING COUNSEL APPOINTMENT

AN ACT to amend and reenact subsection 1 of section 14-17-18 of the North Dakota Century Code, relating to appointment of counsel in paternity proceedings; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-17-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. ~~The court shall appoint counsel to represent the interests of any party who is financially unable to obtain counsel in proceedings leading to the initial judicial determination of parentage under this chapter.~~

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

Approved April 4, 1997

Filed April 4, 1997