

DOMESTIC RELATIONS AND PERSONS

CHAPTER 134

HOUSE BILL NO. 1043

(Legislative Council)
(Judiciary Committee)

DISCRIMINATORY HOUSING PRACTICES

AN ACT to create and enact a new section to chapter 14-02.4 and chapter 14-02.5 of the North Dakota Century Code, relating to discriminatory housing practices; to amend and reenact section 14-02.4-19 of the North Dakota Century Code, relating to actions for discrimination; to repeal sections 14-02.4-12 and 14-02.4-13, relating to unfair housing; to provide a penalty; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-02.4 of the North Dakota Century Code is created and enacted as follows:

Discriminatory housing practices.

1. It is a discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed or trust, or will to:
 - a. Refuse to transfer an interest in real property or housing accommodation to a person because of the person's status with respect to public assistance;
 - b. Discriminate against a person in the terms, conditions, or privileges of the transfer of an interest in real property or housing accommodation because of the person's status with respect to public assistance; or
 - c. Indicate or publicize that the transfer of an interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of the person's status with respect to public assistance.
2. It is a discriminatory practice for a person, or agent or employee of the person, who lends or provides other financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of real property to discriminate in lending or financial assistance decisions, or in the extension of services in connection with

those decisions, based on the status with respect to public assistance of the person seeking the loan or financial assistance.

3. Any person claiming to be aggrieved by a discriminatory practice in violation of this section may bring an action in district court under the procedure provided in section 14-02.4-19.

SECTION 2. AMENDMENT. Section 14-02.4-19 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-19. Actions - Limitations. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to such practice are maintained and administered, or in the judicial district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three years of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to an employer's discriminatory practice may bring a complaint of discriminating employment practices under this chapter to the department of labor within three hundred days of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to ~~housing or~~ public accommodations or services may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, or in the judicial district in which the person would have obtained ~~housing or~~ public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.

SECTION 3. Chapter 14-02.5 of the North Dakota Century Code is created and enacted as follows:

14-02.5-01. Definitions. The definitions in section 14-02.4-02 may be used to supplement the definitions in this chapter. In this chapter, unless the context otherwise requires:

1. "Aggrieved individual" includes any individual who claims to have been injured by a discriminatory housing practice or believes that the individual will be injured by a discriminatory housing practice that is about to occur.
2. "Complainant" means a person, including the department, that files a complaint under section 14-02.5-18.
3. "Conciliation" means the informal negotiations among an aggrieved individual, the respondent, and the department to resolve issues raised by a complaint or by the investigation of the complaint.
4. "Conciliation agreement" means a written agreement resolving the issues in conciliation.
5. "Department" means the department of labor.
6. "Disability" means a mental or physical impairment that substantially limits at least one major life activity, a record of this impairment, or being regarded as having this impairment. The term does not include current illegal use or addiction to any drug or illegal or federally

controlled substance and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite.

7. "Discriminatory housing practice" means an act prohibited by sections 14-02.5-02 through 14-02.5-08 or conduct that is an offense under section 14-02.5-45.
8. "Dwelling" means any structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families or vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure as previously described.
9. "Familial status" means one or more minors being domiciled with a parent or another person having legal custody of the minor or minors; or the designee of the parent or other person having such custody with the written permission of the parent or other person. The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any minor.
10. "Family" includes a single individual.
11. "Respondent" means a person accused of a violation of this chapter in a complaint of discriminatory housing practice or a person identified as an additional or substitute respondent under section 14-02.5-21 or an agent of an additional or substitute respondent.
12. "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant.

14-02.5-02. Sale or rental.

1. A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.
2. A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.
3. This section does not prohibit discrimination against an individual because the individual has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

14-02.5-03. Publication. A person may not make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination

because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

14-02.5-04. Inspection. A person may not represent to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

14-02.5-05. Entry into neighborhood. A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of an individual of a particular race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

14-02.5-06. Disability.

1. A person may not discriminate in the sale or rental of, or make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter; of an individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or of any individual associated with the buyer or renter.
2. A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of that individual; of an individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or of any individual associated with that individual.
3. In this section, discrimination includes:
 - a. A refusal to permit, at the expense of the individual having a disability, a reasonable modification of existing premises occupied or to be occupied by the individual if the modification may be necessary to afford the individual full enjoyment of the premises, except that, in the case of a rental, the landlord may condition, when it is reasonable to do so, permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
 - b. A refusal to make a reasonable accommodation in rules, policies, practices, or services if the accommodation may be necessary to afford the individual equal opportunity to use and enjoy a dwelling;
or
 - c. The failure to design and construct a covered multifamily dwelling in a manner that allows the public use and common use portions of the dwellings to be readily accessible to and usable by individuals having a disability; that allows all doors designed to allow passage into and within all premises within the dwellings to be sufficiently wide to allow passage by an individual who has a disability and who is in a wheelchair; and that provides all premises within the dwellings contain the following features of adaptive design:
 - (1) An accessible route into and throughout the dwelling;

- (2) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (3) Reinforcements in bathroom walls to allow later installation of grab bars; and
 - (4) Kitchens and bathrooms that are usable and have sufficient space in which an individual in a wheelchair can maneuver.
4. Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for individuals having physical disabilities, commonly cited as "ANSI A 117.1 (1986)", satisfies the requirements of adaptive design in subdivision c of subsection 3.
 5. The adaptive design requirements of subdivision c of subsection 3 do not apply to a building the first occupancy of which occurred on or before March 13, 1991.
 6. This section does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals whose tenancy would result in substantial physical damage to the property of others.
 7. Covered multifamily dwellings are buildings consisting of four or more units if the buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

14-02.5-07. Residential real estate-related transaction. A person whose business includes engaging in residential real estate-related transactions may not discriminate against an individual in making a real estate-related transaction available or in the terms or conditions of a real estate-related transaction because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage. A residential real estate-related transaction is the selling, brokering, or appraising of residential real property or the making or purchasing of loans or the provision of other financial assistance to purchase, construct, improve, repair, maintain a dwelling, or to secure residential real estate. For the purposes of this section, a person is in the business of selling residential real property if within the preceding twelve months, the person has participated as principal in three or more transactions involving the sale of any dwelling or any interest in a dwelling or has participated as agent, other than in the sale of the person's own personal residence, in providing sales facilities or sales services in two or more transactions involving the sale of any dwelling or any interest in a dwelling.

14-02.5-08. Brokerage services. A person may not deny an individual access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against an individual in the terms or conditions of access, membership, or participation in the organization, service, or facility because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

14-02.5-09. Sales and rentals exempted.

1. Sections 14-02.5-02 through 14-02.5-08 do not apply to the sale or rental of a single-family house sold or rented by the owner if the owner does

not own more than three single-family houses at any one time or own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time. In addition, the house must be sold or rented without the use of the sales or rental facilities or services of a licensed real estate broker, agent, or realtor, or of an employee or agent of a licensed broker, agent, or realtor, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by section 14-02.5-03.

2. Sections 14-02.5-02 through 14-02.5-08 do not apply to the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.
3. The exemption in subsection 1 applies only to one sale or rental in a twenty-four-month period, if the owner was not the most recent resident of the house at the time of the sale or rental.

14-02.5-10. Religious organization, private club, and appraisal exemption.

1. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to individuals of the same religion or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.
2. This chapter does not prohibit a private club that is not in fact open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or from giving preference to its members, unless membership in the club is restricted because of race, color, or national origin.
3. This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

14-02.5-11. Housing for elderly exempted.

1. The provisions of this chapter relating to familial status and age do not apply to housing that the department determines is specifically designed and operated to assist elderly individuals under a federal or state program; intended for, and solely occupied by, individuals sixty-two years of age or older; or intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit as determined by department rules. In determining whether housing qualifies as housing for elderly under this section, the department shall adopt rules that require at least the following factors:

- a. The existence of significant facilities and services specifically designed to meet the physical or social needs of older individuals or, if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older individuals;
 - b. That at least eighty percent of the units are occupied by at least one individual fifty-five years of age or older per unit; and
 - c. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for individuals fifty-five years of age or older.
2. Housing may not be considered to be in violation of the requirements for housing for elderly under this section by reason of:
- a. Individuals residing in the housing as of the effective date of this Act who do not meet the age requirements of this section, provided that new occupants of the housing meet the age requirements; or
 - b. Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.

14-02.5-12. Effect on other law.

1. This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards.
2. This chapter does not affect a requirement of nondiscrimination in any other state or federal law.

14-02.5-13. Duties and powers of department. The department shall administer this chapter. The department may adopt rules necessary to implement this chapter, but substantive rules adopted by the department must impose obligations, rights, and remedies that are the same as are provided in federal fair housing regulations. Within the limits of legislative appropriations the department shall foster prevention of discrimination under this chapter through education for the public, landlords, publishers, realtors, brokers, lenders, and sellers on the rights and responsibilities provided under this chapter and ways to respect those protected rights. The department shall emphasize conciliation to resolve complaints.

14-02.5-14. Complaints. As provided by sections 14-02.5-18 through 14-02.5-35, the department shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this chapter.

14-02.5-15. Reports and studies. The department shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The department shall make studies relating to the nature and extent of discriminatory housing practices in this state.

14-02.5-16. Cooperation with other entities. The department shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

14-02.5-17. Gifts and grants - Fair housing fund - Continuing appropriation.

The department may accept grants from the federal government for administering this chapter. Grants received must be deposited to the credit of the fair housing fund in the state treasury. Moneys deposited to the credit of the fund are appropriated to the department on a continuing basis for the purposes of administering this chapter.

14-02.5-18. Complaint.

1. The department shall investigate complaints of alleged discriminatory housing practices. An aggrieved individual may file a complaint with the department alleging the discriminatory housing practice. The department may file a complaint. A complaint must be in writing, under oath, and in the form prescribed by the department. A complaint must be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later. A complaint may be amended at any time.
2. On the filing of a complaint, the department shall give the aggrieved individual notice that the complaint has been received, advise the aggrieved individual of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of the filing of the complaint or the identification of an additional or substitute respondent under section 14-02.5-22, serve on each respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter and a copy of the original complaint.

14-02.5-19. Answer.

1. Not later than the tenth day after the date of receipt of the notice and copy of the complaint under subsection 2 of section 14-02.5-18, a respondent may file an answer to the complaint. An answer must be in writing, under oath, and in the form prescribed by the department.
2. An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

14-02.5-20. Investigation.

1. If the federal government has referred a complaint to the department or has deferred jurisdiction over the subject matter of the complaint to the department, the department shall investigate the allegations set forth in the complaint.
2. The department shall investigate all complaints and, except as provided by subsection 3, shall complete an investigation not later than the hundredth day after the date the complaint is filed or, if it is impracticable to complete the investigation within the hundred-day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.
3. If the department is unable to complete an investigation within the time periods prescribed by subsection 2, the department shall notify the complainant and the respondent in writing of the reasons for the delay.

14-02.5-21. Additional or substitute respondent. The department may join a person not named in the complaint as an additional or substitute respondent if during the investigation the department determines that the person is alleged to be engaged or to have engaged in the discriminatory housing practice upon which the complaint is based. In addition to the information required in the notice under subsection 2 of section 14-02.5-18, the department shall include in a notice to a respondent joined under this section the reasons for the determination that the person is properly joined as a respondent.

14-02.5-22. Conciliation.

1. The department shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the department, to the extent feasible, engage in conciliation with respect to the complaint. A conciliation agreement between a respondent and the complainant is subject to departmental approval. A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.
2. A conciliation agreement is public information unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of concerned persons. After completion of the department's investigation, the department shall make available to the aggrieved individual and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.

14-02.5-23. Temporary or preliminary relief. The department may authorize a claim for relief for temporary or preliminary relief pending the final disposition of a complaint, if the department concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter. On receipt of the department's authorization, the attorney general shall promptly file the claim. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable statutes and the North Dakota Rules of Civil Procedure. The filing of a claim for relief under this section does not affect the initiation or continuation of administrative proceedings under section 14-02.5-31.

14-02.5-24. Investigative report. The department shall prepare a final investigative report, including the names of and dates of contacts with witnesses, a summary of correspondence and other contacts with the aggrieved individual and the respondent showing the dates of the correspondence and contacts, a summary description of other pertinent records, a summary of witness statements, and answers to interrogatories. A final report under this section may be amended if additional evidence is discovered.

14-02.5-25. Reasonable cause determination.

1. The department shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The department shall make this determination not later than the hundredth day after the date a complaint is filed unless making

the determination is impracticable, or the department approves a conciliation agreement relating to the complaint.

2. If making the determination within the period is impracticable, the department shall give in writing to the complainant and the respondent the reasons for the delay. If the department determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the department shall, except as provided by section 14-02.5-27, immediately issue a charge on behalf of the aggrieved individual.

14-02.5-26. Charge.

1. A charge issued under section 14-02.5-25 must consist of a short and plain statement of the facts on which the department finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, must be based on the final investigative report, and is not limited to the facts or grounds alleged in the complaint.
2. Upon issuing a charge, the department shall send a copy of the charge with information about the election under section 14-02.5-30 to each respondent and each aggrieved individual on whose behalf the complaint was filed.
3. The department shall include with a charge sent to a respondent a notice of the opportunity for a hearing under section 14-02.5-31.

14-02.5-27. Land use law. If the department determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the department may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action.

14-02.5-28. Dismissal. If the department determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the department shall promptly dismiss the complaint. The department shall make public disclosure of each dismissal.

14-02.5-29. Pending civil trial. The department may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

14-02.5-30. Election of judicial determination. A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by section 14-02.5-36. The election must be made not later than the twentieth day after the date the person having the election receives service under subsection 2 of section 14-02.5-26 or, in the case of the department, not later than the twentieth day after the date the charge is issued. The person making the election shall give notice to the department and to all other complainants and respondents to whom the charge relates.

14-02.5-31. Administrative hearing. If a timely election is not made under section 14-02.5-30, the department shall provide for a hearing on the charge. Except as provided in this section, chapter 28-32 governs a hearing and an appeal of a hearing. A hearing under this section on an alleged discriminatory housing practice

may not continue after the beginning of the trial of a claim for relief commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.

14-02.5-32. Administrative penalties.

1. If the department determines at a hearing under section 14-02.5-31 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the department may order the appropriate relief, including actual damages, reasonable attorneys' fees, court costs, and other injunctive or equitable relief.
2. To vindicate the public's interest, the department may assess a civil penalty against the respondent in an amount that does not exceed:
 - a. Eleven thousand dollars if the respondent has been found by order of the department or a court to have committed a prior discriminatory housing practice; or
 - b. Except as provided by subsection 3, twenty-seven thousand dollars if the respondent has been found by order of the department or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charges and fifty-five thousand dollars if the respondent has been found by the department or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of filing of the charge.
3. If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in subdivision b of subsection 2 may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.
4. At the request of the department, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section must be paid to the state treasurer for deposit in the general fund.

14-02.5-33. Effect of departmental order. A departmental order under section 14-02.5-32 does not affect a contract, sale, encumbrance, or lease that is consummated before the department issues the order and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this chapter.

14-02.5-34. Licensed or regulated business. If the department issues an order with respect to a discriminatory housing practice that occurs in the course of a business subject to a licensing or regulation by a governmental agency, the department, not later than the thirtieth day after the date the order is issued, shall send copies of the findings and the order to the governmental agency and recommend to the governmental agency appropriate disciplinary action.

14-02.5-35. Order in preceding five years. If the department issues an order against a respondent against whom another order was issued within the preceding

five years under section 14-02.5-33, the department shall send a copy of each order to the attorney general.

14-02.5-36. Attorney general action for enforcement. If a timely election is made under section 14-02.5-30, the department shall authorize and the attorney general shall file not later than the thirtieth day after the date of the election a claim for relief seeking relief on behalf of the aggrieved person in a district court. Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur. An aggrieved individual may intervene in the action. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under sections 14-02.5-39 through 14-02.5-44. If monetary relief is sought for the benefit of an aggrieved individual who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved individual has not complied with discovery orders entered by the court.

14-02.5-37. Pattern or practice case - Penalties.

1. On the request of the department, the attorney general may file a claim for relief in district court for appropriate relief if the department has reasonable cause to believe that a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter or a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.
2. In an action under this section, the court may award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter; award other appropriate relief, including monetary damages, reasonable attorneys' fees, and court costs; and to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed fifty thousand dollars for a first violation and one hundred thousand dollars for a second or subsequent violation.
3. A person may intervene in an action under this section if the person is a person aggrieved by the discriminatory housing practice or a party to a conciliation agreement concerning the discriminatory housing practice.

14-02.5-38. Subpoena enforcement. The attorney general, on behalf of the department or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

14-02.5-39. Civil action.

1. An aggrieved person may file a civil action in district court not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.
2. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory

housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.

3. An aggrieved individual may file a claim for relief whether a complaint has been filed under section 14-02.5-18 and without regard to the status of any complaint filed under that section.
4. If the department has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file a claim for relief with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.
5. An aggrieved individual may not file a claim for relief with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the department if the department has begun a hearing on the record under this chapter with respect to the charge.

14-02.5-40. Court-appointed attorney. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person.

14-02.5-41. Relief granted. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, reasonable attorneys' fees, court costs, and subject to section 14-02.5-42, a permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

14-02.5-42. Effect of relief granted. Relief granted under sections 14-02.5-39 through 14-02.5-44 does not affect a contract, sale, encumbrance, or lease that is consummated before the granting of the relief and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter.

14-02.5-43. Intervention by attorney general. On request of the department, the attorney general may intervene in an action under sections 14-02.5-39 through 14-02.5-44 if the department certifies that the case is of general public importance. The attorney general may obtain the same relief as is available to the attorney general under subsection 2 of section 14-02.5-37.

14-02.5-44. Prevailing party. A court in an action brought under this chapter or the department in an administrative hearing under section 14-02.5-31 may award reasonable attorneys' fees to the prevailing party and assess court costs against the nonprevailing party.

14-02.5-45. Intimidation or interference - Penalty.

1. A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:
 - a. Because of the individual's race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage and because the individual is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the

sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

- b. Because the individual is or has been or to intimidate the individual from participating, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage, in an activity, service, organization, or facility described by subdivision a; affording another individual opportunity or protection to so participate; or lawfully aiding or encouraging other individuals to participate, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage, in an activity, service, organization, or facility described in subdivision a.

2. An offense under this section is a class A misdemeanor.

SECTION 4. REPEAL. Sections 14-02.4-12 and 14-02.4-13 of the North Dakota Century Code are repealed.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$39,000, or so much of the sum as may be necessary, and federal funds of \$159,000 to the labor commissioner for the purpose of providing services to prevent discrimination in North Dakota, including employment discrimination and unfair housing practices, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 6. EFFECTIVE DATE. This Act becomes effective on October 1, 1999.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 135

SENATE BILL NO. 2254

(Senators Wanzek, Christmann, D. Mathern, Watne)
(Representatives Kliniske, Sandvig)

PARTIAL-BIRTH ABORTIONS

AN ACT relating to the performance of partial-birth abortions; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Partially born" means the living intact fetus's body, with the entire head attached, is delivered so that any of the following has occurred:
 - a. The living intact fetus's entire head, in the case of a cephalic presentation, or any portion of the living intact fetus's torso above the navel, in the case of a breech presentation, is delivered past the mother's vaginal opening; or
 - b. The living intact fetus's entire head, in the case of a cephalic presentation, or any portion of the living intact fetus's torso above the navel, in the case of a breech presentation, is delivered outside the mother's abdominal wall.
2. "Sharp curettage or suction curettage abortion" means an abortion in which the developing child and products of conception are evacuated from the uterus with a sharp curettage or through a suction cannula with an attached vacuum apparatus.

SECTION 2. Prohibition - Penalty - Exception.

1. Any person who intentionally causes the death of a living intact fetus while that living intact fetus is partially born is guilty of a class AA felony. A mother whose living intact fetus dies while partially born may not be prosecuted for a violation of this Act or for conspiracy to violate this Act.
2. This Act does not apply to a sharp curettage or suction curettage abortion or to any offense committed under chapter 12.1-17.1 or chapter 14-02.1.

SECTION 3. Exception for life of mother. Section 2 does not prohibit a physician from taking measures that in the physician's medical judgment are necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, if:

1. Every reasonable precaution is also taken, in this case, to save the child's life; and

2. The physician first certifies in writing, setting forth in detail the facts upon which the physician relies in making this judgment. This certification is not required in the case of an emergency and the procedure is necessary to preserve the life of the mother.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 136

HOUSE BILL NO. 1473

(Representatives Jensen, Delmore)
(Senators C. Nelson, W. Stenehjem)

DOMESTIC VIOLENCE AND SEXUAL ASSAULT PREVENTION FUND

AN ACT to amend and reenact sections 14-07.1-01, 14-07.1-15, and 14-07.1-16 of the North Dakota Century Code, relating to the domestic violence and sexual assault prevention fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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 sexual assault 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 and sexual assault.
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.

SECTION 2. AMENDMENT. Section 14-07.1-15 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-15. Domestic violence and sexual assault prevention fund established.

The domestic violence and sexual assault 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.

SECTION 3. AMENDMENT. Section 14-07.1-16 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-16. Grants - Eligibility - Conditions - Limitation. The department shall administer moneys in the domestic violence and sexual assault prevention fund for grants to domestic violence sexual assault organizations as defined in section 14-07.1-01. ~~An~~ Up to ten percent of the fund may be allocated to the state domestic violence sexual assault coalition, as recognized by the state department of health. A direct service provider agency that is 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.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 137**SENATE BILL NO. 2197**
(Senators Cook, Christmann, Traynor)
(Representative Kliniske)**DOMESTIC ABUSE FALSE ALLEGATIONS**

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to false allegations of domestic abuse.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Allegation of domestic violence - Effect. If the court finds that a party's allegation of domestic violence in a domestic violence protection order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding, or termination of parental rights proceeding is false and not made in good faith, the court shall order the party making the false allegation to pay court costs and reasonable attorney's fees incurred by the other party in responding to the allegation.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 138

HOUSE BILL NO. 1077

(Judiciary Committee)
(At the request of the Supreme Court)

FOREIGN DOMESTIC VIOLENCE PROTECTION ORDERS

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to recognition and enforcement of foreign domestic violence protection orders; to amend and reenact section 14-07.1-06 of the North Dakota Century Code, relating to violations of protection orders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Foreign domestic violence protection orders - Full faith and credit recognition and enforcement. Subject to subsection 1, a domestic violence protection order issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession of the United States must be accorded full faith and credit by the courts of this state and enforced as if the order was issued by a court in this state.

1. A foreign domestic violence protection order is enforceable in this state if all of the following are satisfied:
 - a. The respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
 - b. The order is in effect in the issuing jurisdiction;
 - c. The issuing court had jurisdiction over the parties and the subject matter;
 - d. The respondent was afforded reasonable notice and opportunity to be heard sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must have been provided within the time required by the law of the issuing jurisdiction, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any prosecution for violation of the foreign protection order or any process filed seeking enforcement of the order; and
 - e. If the order also provides protection for the respondent, a petition, application, or other written pleading was filed with the issuing court seeking such an order and the issuing court made specific findings that the respondent was entitled to the order.

2. A person entitled to protection under a foreign domestic violence protection order may file the foreign order in the office of any clerk of district court in this state. The person filing the order shall also file with the clerk of district court an affidavit certifying the validity and status of the foreign order and attesting to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction. If a foreign order is filed under this subsection, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency as provided under section 14-07.1-03. Filing of a foreign order under this subsection is not a prerequisite to the order's enforcement in this state. A fee for filing the foreign order may not be assessed.
3. A law enforcement officer may rely upon any foreign domestic violence protection order that has been provided to the officer by any source. The officer may make arrests for violation of the order in the same manner as for violation of a protection order issued in this state. A law enforcement officer may rely on the statement of the person protected by the order that the order is in effect and that the respondent was personally served with a copy of the order. A law enforcement officer acting in good faith and without malice in enforcing a foreign protection order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the protection order.
4. Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence protection order known by that person to be false or invalid, or who denies having been served with a protection order when that person has been served with such an order, is guilty of a class A misdemeanor.

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

14-07.1-06. Penalty for violation of a protection order. Whenever a protection order is granted pursuant to under 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. Violation of a foreign protection order entitled to full faith and credit recognition under section 1 of this Act is a class A misdemeanor. A second or subsequent violation of such an order is a class C felony.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 139**SENATE BILL NO. 2306**

(Senators Krebsbach, Lyson)
(Representatives Price, Sveen)

DOMESTIC VIOLENCE ARRESTS

AN ACT to amend and reenact section 14-07.1-11 of the North Dakota Century Code, relating to arrest without warrant in domestic violence assaults.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-11 of the North Dakota Century Code is amended and reenacted as follows:

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~~ twelve 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~~ twelve 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.

Approved March 17, 1999
Filed March 17, 1999

CHAPTER 140**SENATE BILL NO. 2288**

(Senator W. Stenehjem)

(Representatives Hoffner, R. Kelsch, Mahoney, Wentz)

CHILD SUPPORT ARREARS AS JUDGMENTS

AN ACT to amend and reenact subsection 1 of section 14-08.1-05 of the North Dakota Century Code, relating to treatment of child support arrears as judgments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:
 - a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, and must be entered in the judgment docket, upon filing by the judgment creditor or the judgment creditor's assignee of a written request accompanied by a verified statement of arrearage or certified copy of the payment records of the clerk of district court maintained under section 14-09-08.1 and an affidavit of identification of the judgment debtor, and otherwise enforced as a judgment. The due and unpaid payments and any judgment entered in the judgment docket pursuant to this section are not subject to the statutes of limitations provided in chapter 28-01, nor may such judgment be canceled pursuant to section 28-20-35;
 - b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and
 - c. Not subject to retroactive modification.

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

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 141

SENATE BILL NO. 2170

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT LAW REVISIONS

AN ACT to create and enact a new section to chapter 14-08.1, a new section to chapter 14-19, and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to certification of child support records, the duties of voluntary paternity establishment service entities, and the recording of social security numbers on game and fish license and permit applications; to amend and reenact subsection 1 of section 14-09-08.4, sections 14-09-08.6, 14-09-08.10, 14-09-08.11, 14-09-09.6, 14-09-09.15, 14-09-09.16, 14-09-09.28, 14-09-25, subsection 3 of section 14-17-11, subsection 4 of section 14-17-14, sections 14-17-17, 14-19-01, 14-19-05, 14-19-07, 14-19-08, 39-06-07, section 50-09-02.4, subdivision h of subsection 1 of section 50-09-08.2, sections 50-09-08.3, and 50-09-08.5 of the North Dakota Century Code, relating to technical and conforming amendments to child support laws and the state disbursement unit; to repeal sections 14-09-14 and 14-09-27 of the North Dakota Century Code, relating to exceptions to parental liability for child support and to the state disbursement fund; to provide a continuing appropriation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Certification of records. The clerk of court and any authorized agent of the public authority or a child support agency, in any circumstance or proceeding requiring proof of the contents of the official records of the state regarding any information maintained in the state case registry of the automated data processing system established under section 50-09-02.1, may certify the content of those records. A certification provided under this section is prima facie evidence of the contents of those records.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

1. Each child support order must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
 - a. In the case of an order with respect to which there is in effect an assignment under chapter 50-09 ~~or 50-24.1~~, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
 - b. In the case of any other order neither the obligor nor the obligee has requested review.

SECTION 3. AMENDMENT. Section 14-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.6. Obligor's duties upon review - Failure to provide information.

1. The obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish the review, no later than five working days before the date of review. The information must be furnished by:
 - a. ~~Providing~~ providing an income report, in the form and manner required by the ~~child support agency~~ public authority, accurately completed and attested to by the obligor; earnings statements secured from the obligor's current income payor if the obligor changed employment after the end of the latest income tax year for which the obligor filed a return, and providing:
 - b. ~~a.~~ A verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or
 - e. ~~b.~~ A written authorization by which the child support agency may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.
2. ~~If information concerning the obligor's income sufficient to accomplish the review has not been timely furnished by the obligor, the child support agency may apply to the court for an order compelling the obligor to furnish information sufficient to accomplish the review.~~
3. ~~If an application to the court made pursuant to subsection 2 has not resulted in the production of the obligor has not produced~~ information under subsection 1 concerning the obligor's income, sufficient to accomplish the review, the child support agency may base its review determination on the assumption that the obligor's income has increased at the rate of ten percent per year since the child support order under review was entered or last modified.

SECTION 4. AMENDMENT. Section 14-09-08.10 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.10. Order. Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for health insurance coverage for that child.

1. Except as provided in subsection 2, the order must require the obligor to provide satisfactory health insurance coverage whenever that coverage is available at reasonable cost or becomes available at reasonable cost.
2. If the obligee is an individual with physical custody of the child, the obligee must be required to provide satisfactory health insurance whenever that coverage is available at no or nominal cost.

SECTION 5. AMENDMENT. Section 14-09-08.11 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.11. Eligible child - Employer to permit enrollment.

1. When an obligor is required to cover a minor child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor until the child's eighteenth birthday or until further order of the court. If health insurance coverage required under section 14-09-08.10 is available through an income ~~payer~~ payor, the income ~~payer~~ payor must:
 - a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
 - b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
 - c. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application ~~to~~ by the public authority, subject to subsection 2, whenever the child receives:
 - (1) Benefits through a ~~demonstration project established under section 50-06-01.8,~~ temporary assistance for needy families or foster care under chapter 50-09, or medical assistance under chapter 50-24.1; or
 - (2) Services provided upon application of an obligee to the child support agency;
 - d. Not disenroll or eliminate coverage for any child unless the income ~~payer~~ payor is provided satisfactory written evidence that:
 - (1) The order issued under section 14-09-08.10 is no longer in effect;
 - (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment; or
 - (3) The income ~~payer~~ payor has eliminated family health coverage for all of its employees;
 - e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the health insurance provider; and
 - f. If the amount required to be withheld under subdivision e, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income.

2. Before making application under subdivision c of subsection 1, the public authority shall provide notice to the obligor that the obligor may contest the proposed application by filing a written request for a hearing within ten days of the date the notice is issued. If the obligor contests the application for coverage, a hearing must be held, and the court shall require the public authority to make application if it determines coverage for the child is available to the obligor at reasonable cost.
3. Withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the health insurance provider. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the income ~~payer~~ payor must promptly inform the clerk of court or public authority that issued the order under section 14-09-09.15 of the insufficiency.

SECTION 6. AMENDMENT. Section 14-09-09.6 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.6. Voluntary income withholding for support - Limitations. An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payor in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An income withholding authorization made under this section is binding on the income payor one week after service upon the income payor by ~~personal service or by certified~~ first-class mail, or in any other manner agreed to by the income payor, of a true copy of the executed income withholding authorization. The income payor shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payor may deduct a fee of three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payor with an income withholding authorization issued under this section discharges the income payor's liability to the obligor for that portion of the obligor's income. The income payor may not use the income withholding authorization as a basis for any disciplinary action against the obligor.

SECTION 7. AMENDMENT. Section 14-09-09.15 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.15. Form - Effect of income withholding order. The income withholding order must be issued in the name of the state of North Dakota; ~~be attested in the name of the judge, subscribed by the clerk or a designee of the public authority~~ in the standard format for notice of the order prescribed by the secretary of the United States department of health and human services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payor to comply with the income withholding order, and be directed to all current and subsequent income payors of the obligor. The income withholding order is binding on the income payor until further notice by the clerk or the public authority and applies to all current and subsequent periods in which income is owed the obligor by the income payor. The income withholding order has priority over any other legal process against the same income.

¹⁰⁷ **SECTION 8. AMENDMENT.** Section 14-09-09.16 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.16. Service of income withholding order on income payor.

1. The clerk of court or the public authority shall serve the income withholding order on the income payor ~~in the manner provided for service of a summons in a civil action by first-class mail or in any other manner agreed to by the income payor,~~ and upon the obligor by first-class mail to the obligor's last-known address.
2. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order must be served on any known income payor within ~~five~~ two business days of the ~~issuance of the judgment or order which requires the payment of child support date of receipt of information necessary to carry out income withholding.~~ Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order must be served on any subsequently identified income payor within ~~five~~ two business days ~~after the issuer is informed of the name and address of such an income payor of the date of receipt of information necessary to carry out income withholding.~~
3. An income withholding order may also be issued and served at the request of the obligor. ~~The income withholding order, upon certification by the public authority to the secretary of state and the legislative council that the secretary of the United States department of health and human services, under authority of 42 U.S.C. 666(b)(6)(A)(ii), has prescribed a standard format for notice of the order, must be in that standard format and contain only the information necessary for the income payor to comply with the withholding order. Before that certification, the income withholding order must state all of the following:~~
 4. ~~4.~~ 4. ~~That the obligor is properly subject to an income withholding order and that the~~ The income payor ~~is therefore required to~~ shall withhold a stated amount, determined under section 14-09-09.30, from the obligor's income at the time the obligor is paid for transmittal to the ~~clerk of court or the public authority~~ within seven business days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.
 2. ~~5.~~ 5. ~~That the~~ The income payor may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
 3. ~~6.~~ 6. ~~That the~~ The amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be

¹⁰⁷ Section 14-09-09.16 was also amended by section 2 of House Bill No. 1121, chapter 142.

accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.

4. ~~7.~~ 7. ~~That the~~ The income payor shall begin withholding no later than the first payday that occurs after service of the income withholding order.
5. ~~8.~~ 8. ~~That if~~ If the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the ~~clerk of court or~~ the public authority that portion thereof which the obligee's claim bears to the combined total of all claims.
6. ~~9.~~ 9. ~~That the~~ The income payor shall notify the ~~clerk of court or~~ the public authority in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payor, if known.
7. ~~10.~~ 10. ~~That if~~ If the income payor is subject to income withholding orders for more than one obligor:
 - a. ~~Prior to the system implementation date,~~ the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same ~~clerk of court with~~ identification of the amount attributable to each obligor; and
 - b. ~~Thereafter,~~ the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the public authority with identification of the amount attributed to each obligor.
8. ~~That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14-09-09.3.~~
9. ~~That the withholding order has priority over any other legal process under state law against the same wages.~~
10. ~~If appropriate,~~ that the obligor is required to provide health insurance coverage for a child who is the subject of a child support order.

SECTION 9. AMENDMENT. Section 14-09-09.28 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.28. Application to existing cases. Sections 14-09-09.26, 14-09-09.27, ~~14-12.1-12~~, subsection 3 of section ~~14-12.1-18~~, and section ~~14-12.1-38~~ 14-12.2-19, and 14-12.2-20 apply to actions filed prior to July 7, 1991.

¹⁰⁸ SECTION 10. AMENDMENT. Section 14-09-25 of the North Dakota Century Code is amended and reenacted as follows:

14-09-25. (~~Effective July 1, 1999~~) State disbursement unit - Duties - Continuing appropriation.

1. The public authority shall establish a state disbursement unit for the collection and disbursement of payments of child support. The state disbursement unit is responsible for the collection and disbursement of all payments under child support orders.
2. The public authority may contract with any public or private entity for any service provided by the state disbursement unit. The state disbursement unit may employ technology and agents to allow receipt of child support payments at locations and times when state disbursement unit staff are not available.
3. The state disbursement unit shall use automated procedures, electronic processes, and computer-driven technology, including the statewide automated data processing system established under section 50-09-02.1, to the maximum extent feasible, efficient, and economical, for the collection and distribution of child support payments.
4. The state disbursement unit shall account for and disburse all support payments received by it, maintain necessary records, and develop procedures for providing information to the parties, including the obligor and obligee, regarding actions taken and, at least annually, regarding child support payments collected and distributed. The state disbursement unit shall adopt procedures for the maintenance and retention of records of child support payments, and for the storage and destruction of records when the support obligation is satisfied or is terminated.
5. The state disbursement unit shall ~~establish a fund, known as the state disbursement unit fund. All deposit all~~ child support payments received; ~~except those payments assigned to the state, shall be deposited into the state disbursement unit fund, and all disbursements of child support, except those payments assigned to the state, must be made from the state disbursement unit fund in the state treasury. All payments so deposited, except those payments assigned to the state, are appropriated to the public authority as a standing and continuing appropriation for the purpose of making disbursements to obligees entitled to the child support payments collected.~~
6. The state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Any disbursement made in error is not a gift and must be repaid. The public authority may take any action not inconsistent with law to secure repayment of any disbursement made in error.

¹⁰⁸ Section 14-09-25 was also amended by section 1 of Senate Bill No. 2287, chapter 284.

7. Unless notice has otherwise been provided, the state disbursement unit shall provide notice to the obligor, the obligee, and any income payor that payment must be made to the state disbursement unit.

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

3. Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. ~~Verified documentation~~ Documentation of the chain of custody of the genetic specimens, provided by an examiner appointed under section 14-17-10, is competent evidence to establish the chain of custody. ~~A verified report obtained from an examiner appointed pursuant to under section 14-17-10~~ must be admitted at trial unless a written objection to the testing procedures or the results of genetic analysis has been made at least ten days before trial or at an earlier time determined by the court.

SECTION 12. AMENDMENT. Subsection 4 of section 14-17-14 of the North Dakota Century Code is amended and reenacted as follows:

4. Support judgments or orders ~~ordinarily~~ for future support must be for ~~periodic~~ monthly payments which ~~may vary in amount~~ must be in amounts consistent with guidelines established under section 14-09-09.7. ~~In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.~~

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

14-17-17. Modification of judgment or order. The court has continuing jurisdiction to modify a judgment or order for future support and, subject to section 14-09-06.6, custody and rights of visitation for the child.

SECTION 14. AMENDMENT. Section 14-19-01 of the North Dakota Century Code is amended and reenacted as follows:

14-19-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Birthing hospital" means a hospital licensed under chapter 23-16 which provides obstetrical services.
2. "Department" means the department of human services.
3. "Donor" means a woman whose body produced an egg for the purposes of assisted conception but does not include a woman whose body produces an egg used for the purpose of conceiving a child for that woman.
4. "Gestational carrier" means a woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.

5. "Married woman" includes a woman who attempted to marry by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid.
6. "Mother" means a woman who gives birth to a child or, if pregnancy resulted from assisted conception, the woman who is the donor but not the woman who is the gestational carrier.
7. "Party" means the man with whom the relationship of father and child is sought or established, the child's mother, and, for purposes of proceedings to relieve a party of the relationship of father and child, the child.
8. "Relationship of father and child" means the legal relationship existing between a father and the father's natural or adoptive child incident to which the law confers or imposes rights, privileges, duties, and obligations.
9. "Voluntary paternity establishment service entity" means the state department of health and any child support agency, as that term is defined in section 14-09-09.10.

SECTION 15. AMENDMENT. Section 14-19-05 of the North Dakota Century Code is amended and reenacted as follows:

14-19-05. Filing of acknowledgment - ~~Services provided.~~ An acknowledgment of paternity made under this chapter must be filed with the state department of health. Upon request of the department, the state department of health shall furnish a certified copy of an acknowledgment of paternity to the department. ~~The state department of health shall offer voluntary paternity establishment services.~~

SECTION 16. A new section to chapter 14-19 of the North Dakota Century Code is created and enacted as follows:

Voluntary paternity establishment service entities - Duties.

1. At any time after an unmarried woman is determined to be pregnant, a voluntary paternity establishment entity may:
 - a. Provide to the mother and the alleged father, if the alleged father is present:
 - (1) Written materials about paternity establishment;
 - (2) The forms necessary to voluntarily acknowledge paternity;
 - (3) A written and oral description of the rights, responsibilities, and legal consequences of establishing paternity; and
 - (4) The opportunity to speak, either by telephone or in person, with staff who are trained to clarify information and answer questions about paternity establishment; and
 - b. Provide the mother and the alleged father, if the alleged father is present, the opportunity to voluntarily acknowledge paternity.

2. Before accepting a voluntary acknowledgment of paternity, a voluntary paternity establishment service entity shall afford due process safeguards by informing, in writing, the mother and the alleged father, if the alleged father is present, of the manner in which a relationship of father and child established under this chapter may be vacated or rescinded.
3. A voluntary paternity establishment service entity shall forward completed acknowledgments to the state department of health.

SECTION 17. AMENDMENT. Section 14-19-07 of the North Dakota Century Code is amended and reenacted as follows:

14-19-07. Immunity from liability. A hospital, ~~its~~ a voluntary paternity establishment service entity, and the agents, or its employees of either, acting in accordance with this chapter or attempting in good faith to do so, are immune from civil liability for that activity.

SECTION 18. AMENDMENT. Section 14-19-08 of the North Dakota Century Code is amended and reenacted as follows:

14-19-08. Powers and duties of the department. The department shall:

1. Provide each birthing hospital and voluntary paternity establishment service entity in the state:
 - a. Written materials about paternity establishment.
 - b. Forms necessary to voluntarily acknowledge paternity.
 - c. A written description of the rights and responsibilities of acknowledging paternity.
2. Provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity reasonably necessary to assist a birthing hospital or voluntary paternity establishment service entity in its duties under this chapter.
3. In cooperation with the state department of health, secure information on each voluntary paternity establishment service entity's and each birthing hospital's paternity acknowledgment program at least annually.
4. In cases involving applications for child support services made to a child support agency which require paternity establishment, determine if a voluntary paternity acknowledgment has been filed with the state department of health.
5. Assure that the same procedures governing birthing hospitals apply to voluntary paternity establishment service entities, including use of the same notice provisions, the same materials, the same evaluation methods, and the same training for personnel.

SECTION 19. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Social security number to be furnished. The social security number of an applicant for any license or permit issued under this chapter must be recorded on

the application unless the applicant is a foreign national to whom no social security number has been issued. A social security number recorded under this section is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 20. AMENDMENT. Section 39-06-07 of the North Dakota Century Code is amended and reenacted as follows:

39-06-07. Application for license or instruction permit.

1. Every application for an instruction permit or for an operator's license must be made upon a form furnished by the director.
2. Every application must state the full name, date of birth, sex, social security number, residence and mailing address, and briefly describe the applicant. In signing the application the applicant is deemed to have certified that all information contained on the application is true and correct. The application must be accompanied by the proper fee. The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.2. The application must contain such other information as the director may require.
3. Whenever an application is received from a person previously licensed in another jurisdiction, the director may request a copy of the driver's record from such other jurisdiction. When received, the driving record becomes a part of the driving record in this state with the same force and effect as though entered on the driving record in this state in the original instance.
4. Whenever the director receives a request for a driving record from another licensing jurisdiction, the record must be forwarded without charge.

SECTION 21. AMENDMENT. Section 50-09-02.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-09-02.4. (Effective July 1, 1999) State case registry.

1. The statewide automated data processing system established under section 50-09-02.1 must include a registry that contains records with respect to:
 - a. Each child support case in which services are being provided by the state agency or a child support agency under title IV-D; and
 - b. Each child support order established or modified in this state on or after October 1, 1998.
2. The case records must use standardized data elements for both parents and contain other information the secretary requires.
3. Each case record concerning a case with respect to which services are being provided by the state agency or a child support agency under title IV-D must:

- a. Include payment records consistent with the requirements of title IV-D, which include:
 - (1) The amount of current monthly or other periodic support owed under the order and other amounts, including arrearages, interest, late payment penalties, fees, and amounts determined under section 14-09-09.30, due or past due under the order;
 - (2) Any amount described in paragraph 1 that has been collected;
 - (3) The distribution of collected amounts;
 - (4) The birthdate and the social security number of any child for whom an order requires the provision of support; and
 - (5) The amount necessary to satisfy any lien imposed under chapter 35-34 or established as a judgment lien under section 14-08.1-05.
- b. Be established, maintained, updated, and monitored on the basis of:
 - (1) Information on administrative actions and administrative and judicial proceedings and orders relating to paternity and child support;
 - (2) Information obtained from comparison with federal, state, and local sources of information;
 - (3) Information on child support collections and distributions; and
 - (4) Any other relevant information.

SECTION 22. AMENDMENT. Subdivision h of subsection 1 of section 50-09-08.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- h. Enter into agreements with financial institutions doing business in the state, and with the assistance, or through the agency, of the secretary, with financial institutions doing business in two or more states:
 - (1) To develop and operate, in coordination with those financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide in each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such financial institution and who owes past due support, as identified by the state agency by name and social security number or other taxpayer number; and

- (2) Under which such financial institution, in response to a notice of lien or an execution, will encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for unpaid child support.

SECTION 23. AMENDMENT. Section 50-09-08.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-09-08.3. Administrative enforcement in interstate cases. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies:

1. Shall respond within five business days of receipt of a request made by another state to enforce a child support order use high-volume automated administrative enforcement, to the same extent as used in intrastate cases, in response to a request made by another state to enforce a child support order, and shall promptly report the results of such enforcement procedure to the requesting state;
2. May transmit requests, by electronic or other means, to other states requests for assistance in cases involving enforcement of child support orders which include information provided and intended to enable the receiving state to compare information about the case to information in the data bases of the receiving state, and which constitute a certification:
 - a. Of the amount of arrearages, if any, under the child support order; and
 - b. That procedural due process requirements applicable to the case have been complied with;
3. In cases in which the state agency receives requests made by another state to enforce a child support order, shall not consider that matter a child support case transferred to this state; and
4. Shall maintain records of:
 - a. The number of requests for assistance made by other states;
 - b. The number of cases in which this state collected support in response to requests made by other states; and
 - c. The amount of support collected.

For purposes of this section, the term "high-volume automated administrative enforcement" means, in interstate cases, on request of another state, the identification, by this state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in another state, and the seizure of such assets, by this state, through levy or other appropriate processes.

SECTION 24. AMENDMENT. Section 50-09-08.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-09-08.5. Securing assets to satisfy past due child support. In acting as the official agency of the state in administering the child support program under title IV-D, in cases in which there is past due child support, the state agency may secure assets to satisfy any current support obligation and the past due amount by issuing writs of execution under chapter 28-21. Those writs of execution may be used to secure or seize property including:

1. Periodic or lump sum payments from:
 - a. An agency administering unemployment compensation benefits, workers' compensation benefits, or other benefits; and
 - b. Judgments, settlements, and gaming proceeds otherwise belonging to the obligor, or payable upon the obligor's demand;
2. Assets of the obligor held in financial institutions; and
3. Public and private retirement funds.

SECTION 25. REPEAL. Section 14-09-14 of the North Dakota Century Code is repealed.

SECTION 26. REPEAL. Section 14-09-27 of the North Dakota Century Code is repealed.

SECTION 27. EFFECTIVE DATE. Sections 10 and 26 of this Act are effective July 1, 1999.

SECTION 28. EMERGENCY. Sections 10 and 26 of this Act are declared to be an emergency measure.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 142

HOUSE BILL NO. 1121

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT NOTICE, PAYMENT, AND INCOME WITHHOLDING

AN ACT to amend and reenact section 14-09-08.1, subsection 9 of section 14-09-09.16, and section 14-09-09.29 of the North Dakota Century Code, relating to notice procedures, procedures upon failure to pay child support, and coordination of income withholding services; to provide for a report to the legislative council; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.1. (Effective through June 30, 1999) Support payments - Payment to court or state disbursement unit - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the clerk of court, as trustee, or to the public authority, for remittance to the obligee. The clerk shall maintain records listing the amount of the payments, the date when the payments must be made, the names and addresses of the parties subject to the order, and any other information necessary for the proper administration of the order in the statewide automated data processing system established under section 50-09-02.1. Before the system implementation date, upon notification that a party to the case is receiving services under title IV-D of the Social Security Act [42 U.S.C. 651 et seq.], or an assignment of support rights is in effect, the clerk of court must credit and transmit payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq., as amended].
2. a. Each party subject to the order shall immediately inform the clerk of court and the public authority of the party's:
 - (1) Social security number;
 - (2) Residential and mailing addresses and any change of address;
 - (3) Telephone number;
 - (4) Motor vehicle operator's license number;
 - (5) Employer's name, address, and telephone number; and

- (6) Change of any other condition which may affect the proper administration of this chapter.
 - b. The requirements of subdivision a must be incorporated into each order for payment of child support.
 - c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, service may be effected by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
 - d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
3. Whenever there is failure to make the payments as required, the clerk shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure.
4. The court of its own motion or on motion of a child support agency or the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, this section applies as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.
5. The clerk of court, at the option of the clerk, may deposit payments received by the clerk under this section, and not required to be paid to the state disbursement unit, in a special trust account in either the Bank of North Dakota or in a banking institution of this state designated as a depository of public funds under chapter 21-04 and make payments from the trust account to the obligee or the clerk may deposit payments received by the clerk under this section with the county treasurer and direct their disbursement under chapter 11-14.

(Effective July 1, 1999) Support payments - Payment to state disbursement unit - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the state disbursement unit for remittance to the obligee.
2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
 - (1) Social security number;

- (2) Residential and mailing addresses and any change of address;
 - (3) Telephone number;
 - (4) Motor vehicle operator's license number;
 - (5) Employer's name, address, and telephone number; and
 - (6) Change of any other condition which may affect the proper administration of this chapter.
- b. The requirements of subdivision a must be incorporated into each order for payment of child support.
 - c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, ~~service may be effected~~ the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
 - d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
3. Whenever there is failure to make the payments as required, the ~~state disbursement unit~~ clerk of court shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district; ~~on a form provided by the judge,~~ to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure.
 4. The court of its own motion or on motion of a child support agency or the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, this section applies as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

¹⁰⁹ **SECTION 2. AMENDMENT.** If Senate Bill No. 2170 is approved by the fifty-sixth legislative assembly and becomes effective, subsection 9 of section 14-09-09.16 of the North Dakota Century Code as amended by section 8 of Senate Bill No. 2170 is amended and reenacted as follows:

¹⁰⁹ Section 14-09-09.16 was also amended by section 8 of Senate Bill No. 2170, chapter 141.

9. The income payor shall notify the clerk of court or the public authority in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payor, if known.

SECTION 3. AMENDMENT. Section 14-09-09.29 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.29. (Effective July 1, 1999) Coordination of income withholding activities. The public authority shall assume responsibility for administration of income withholding orders relating to matters being enforced under title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651] and the receipt and disbursement of child support payments. The clerks of court shall otherwise maintain responsibility for administration of income withholding.

SECTION 4. REPORT TO LEGISLATIVE COUNCIL. The department of human services shall report on the progress of the implementation of this Act to a designated legislative council interim committee between August 1, 2000, and August 31, 2000.

SECTION 5. EFFECTIVE DATE. Sections 1 and 3 of this Act become effective on July 1, 1999.

SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective through January 15, 2001, and after that date is ineffective. Section 14-09-09.29 as it existed on the day before the effective date of this Act becomes effective January 16, 2001.

SECTION 7. EMERGENCY. Sections 1 and 3 of this Act are declared to be an emergency measure.

Approved April 14, 1999
Filed April 15, 1999

CHAPTER 143

SENATE BILL NO. 2073

(Senator W. Stenehjem)

CHILD SUPPORT AFTER MAJORITY

AN ACT to amend and reenact section 14-09-08.2 of the North Dakota Century Code, relating to child support for children after majority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
 - a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
 - b. The child resides with the person to whom the duty of support is owed.
2. A judgment or order may require payment of child support after majority under substantially the circumstances described in subsection 1.
3. The person to whom the duty of support is owed shall under either subsection 1 or 2 may file an affidavit with the district court stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the affidavit, the child support continues pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing such an affidavit.
4. The clerk of court shall serve the affidavit by first-class mail upon the person owing the duty of support. Upon the filing of the affidavit, the child support continues pursuant to subsection 1. If at anytime thereafter the person owing the duty of support files a motion with the court, within twenty days subsequent to service of the affidavit, requesting a hearing before the district court, supported by that person's affidavit that the child is no longer enrolled in or attending high school, the court shall determine if the requirements of subsection 1 are met child is enrolled in and attending high school and shall enter an order accordingly.
3. 5. This section applies to child support orders concerning children described in subsection 1 or 2, regardless of the date of entry of the order, provided that the affidavit described in subsection 2 3 is filed not

later than ninety days after the child graduates from high school or reaches age nineteen, whichever ~~comes~~ occurs first.

4. 6. This section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree or if the court determines the support to be appropriate.
7. For purposes of this section, a child is treated as being in school during summer vacation if the child was enrolled in and attending school and did not graduate from high school at the end of the school period immediately preceding the summer vacation.

Approved March 30, 1999

Filed March 30, 1999

CHAPTER 144**SENATE BILL NO. 2039**
(Legislative Council)
(Child Support Committee)**CHILD SUPPORT EXTENDED VISITATION IMPACT**

AN ACT to amend and reenact subsection 1 of section 14-09-09.7 of the North Dakota Century Code, relating to the impact of extended visitation on child support orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁰ **SECTION 1. AMENDMENT.** Subsection 1 of section 14-09-09.7 of the North Dakota Century Code is amended and reenacted as follows:

1. The department of human services shall establish child support guidelines to assist courts in determining the amount ~~that~~ a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
 - a. Include consideration of gross income.
 - b. Authorize an expense deduction for determining net income.
 - c. Designate other available resources to be considered.
 - d. Specify the circumstances ~~which~~ that should be considered in reducing support contributions on the basis of hardship.
 - e. Include consideration of extended periods of time a minor child spends with the child's obligor parent.

Approved March 18, 1999
Filed March 19, 1999

¹¹⁰ Section 14-09-09.7 was also amended by section 1 of House Bill No. 1028, chapter 145.

CHAPTER 145**HOUSE BILL NO. 1028**

(Legislative Council)
(Child Support Committee)

GROSS INCOME DEFINITION FOR CHILD SUPPORT

AN ACT to amend and reenact subdivision a of subsection 1 of section 14-09-09.7 of the North Dakota Century Code, relating to the child support guidelines' definition of gross income.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹¹ **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 14-09-09.7 of the North Dakota Century Code is amended and reenacted as follows:

- a. Include consideration of gross income. For purposes of the guidelines, gross income does not include an employee benefit over which the employee does not have significant influence or control over the nature or amount unless:
 - (1) That benefit may be liquidated; and
 - (2) Liquidation of that benefit does not result in the employee incurring an income tax penalty.

Approved March 22, 1999
Filed March 22, 1999

¹¹¹ Section 14-09-09.7 was also amended by section 1 of Senate Bill No. 2039, chapter 144.

CHAPTER 146

SENATE BILL NO. 2040 (Legislative Council) (Child Support Committee)

CHILD CUSTODY AND VISITATION

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to the rights and duties of parents in child custody and visitation proceedings; and to amend and reenact section 14-09-24 of the North Dakota Century Code, relating to enforcement of child 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:

Parental custody and visitation rights and duties.

1. Each parent of a child has the following custody and visitation rights and duties:
 - a. Right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information.
 - b. Right to attend educational conferences concerning the child. This right does not require any school to hold a separate conference with each parent.
 - c. Right to reasonable access to the child by written, telephonic, and electronic means.
 - d. Duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.
 - e. Duty to immediately inform the other parent of a change in residential telephone number and address.
 - f. Duty to keep the other parent informed of the name and address of the school the child attends.
2. The court shall include in an order establishing or modifying visitation the rights and duties listed in this section; however, the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion. The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.

SECTION 2. AMENDMENT. Section 14-09-24 of the North Dakota Century Code is amended and reenacted as follows:

14-09-24. Interference with visitation - Attorney's fees - Enforcement remedies and tools. In any proceeding ~~where~~ in which 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. The court may use any remedy that is available to enforce a child support order and which is appropriate to enforce visitation.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 147

SENATE BILL NO. 2152

(Judiciary Committee)

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

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

AN ACT to create and enact chapter 14-14.1 of the North Dakota Century Code, relating to the Uniform Child Custody Jurisdiction and Enforcement Act; to amend and reenact section 54-55-05 of the North Dakota Century Code, relating to the commission on uniform state laws; and to repeal chapter 14-14 of the North Dakota Century Code, relating to the Uniform Child Custody Jurisdiction Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 14-14.1 of the North Dakota Century Code is created and enacted as follows:

14-14.1-01. (102) Definitions. As used in the chapter:

1. "Abandoned" means left without provision for reasonable and necessary care or supervision.
2. "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
3. "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under sections 14-41.1-22 through 14-14.1-37.
4. "Commencement" means the filing of the first pleading in a proceeding.
5. "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
6. "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

7. "Initial determination" means the first child custody determination concerning a particular child.
8. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.
9. "Issuing state" means the state in which a child custody determination is made.
10. "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
11. "Person acting as a parent" means a person, other than a parent, who:
 - a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and
 - b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.
12. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.
13. "Physical custody" means the physical care and supervision of a child.
14. "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.
15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
16. "Tribe" means an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.
17. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

14-14.1-02. (103) Proceedings governed by other law. This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

14-14.1-03. (104) Application to Indian tribes.

1. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act [25 U.S.C. 1901 et seq.] is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

2. A court of this state shall treat a tribe as if it were a state for the purpose of applying sections 14-14.1-01 through 14-14.1-21.
3. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under sections 14-14.1-22 through 14-14.1-37.

14-14.1-04. (105) International application.

1. A court of this state shall treat a foreign country as if it were a state for the purpose of applying sections 14-14.1-01 through 14-14.1-21.
2. Except as otherwise provided in subsection 3, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under sections 14-14.1-22 through 14-14.1-37.
3. A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

14-14.1-05. (106) Effect of child custody determination. A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with section 14-14.1-07 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

14-14.1-06. (107) Priority. If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

14-14.1-07. (108) Notice to persons outside state.

1. Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.
2. Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.
3. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

14-14.1-08. (109) Appearance and limited immunity.

1. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this state for another proceeding or purpose solely by

reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

2. A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.
3. The immunity granted by subsection 1 does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

14-14.1-09. (110) Communication between courts.

1. A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.
2. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
3. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.
4. Except as otherwise provided in subsection 3, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.
5. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

14-14.1-10. (111) Taking testimony in another state.

1. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.
2. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.
3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

14-14.1-11. (112) Cooperation between courts - Preservation of records.

1. A court of this state may request the appropriate court of another state to:
 - a. Hold an evidentiary hearing;
 - b. Order a person to produce or give evidence pursuant to procedures of that state;
 - c. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
 - d. Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
 - e. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.
2. Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection 1.
3. Travel and other necessary and reasonable expenses incurred under subsections 1 and 2 may be assessed against the parties according to the law of this state.
4. A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

14-14.1-12. (201) Initial child custody jurisdiction.

1. Except as otherwise provided in section 14-14.1-15, a court of this state has jurisdiction to make an initial child custody determination only if:
 - a. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
 - b. A court of another state does not have jurisdiction under subdivision a, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 14-14.1-18 or 14-14.1-19, and:
 - (1) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

1. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
2. If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.
3. If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 14-14.1-12 through 14-14.1-14. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.
4. A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 14-14.1-12 through 14-14.1-14, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

14-14.1-16. (205) Notice - Opportunity to be heard - Joinder.

1. Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with section 14-14.1-07 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.
2. This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

3. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the laws of this state as in child custody proceedings between residents of this state.

14-14.1-17. (206) Simultaneous proceedings.

1. Except as otherwise provided in section 14-14.1-15, a court of this state may not exercise its jurisdiction under sections 14-14.1-12 through 14-14.1-21 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 14-14.1-18.
2. Except as otherwise provided in section 14-14.1-15, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties under section 14-14.1-20. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.
3. In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:
 - a. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
 - b. Enjoin the parties from continuing with the proceeding for enforcement; or
 - c. Proceed with the modification under conditions it considers appropriate.

14-14.1-18. (207) Inconvenient forum.

1. A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.
2. Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- a. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
 - b. The length of time the child has resided outside this state;
 - c. The distance between the court in this state and the court in the state that would assume jurisdiction;
 - d. The relative financial circumstances of the parties;
 - e. Any agreement of the parties as to which state should assume jurisdiction;
 - f. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
 - g. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
 - h. The familiarity of the court of each state with the facts and issues in the pending litigation.
3. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.
 4. A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

14-14.1-19. (208) Jurisdiction declined by reason of conduct.

1. Except as otherwise provided in section 14-14.1-15, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:
 - a. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
 - b. A court of the state otherwise having jurisdiction under sections 14-14.1-12 through 14-14.1-14 determines that this state is a more appropriate forum under section 14-14.1-18; or
 - c. No court of any other state would have jurisdiction under the criteria specified in sections 14-14.1-12 through 14-14.1-14.
2. If a court of this state declines to exercise its jurisdiction under subsection 1, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is

commenced in a court having jurisdiction under sections 14-14.1-12 through 14-14.1-14.

3. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection 1, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

14-14.1-20. (209) Information to be submitted to court.

1. Subject to section 14-07.1-18, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:
 - a. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;
 - b. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and
 - c. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.
2. If the information required by subsection 1 is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.
3. If the declaration as to any of the items described in subdivision a, b, or c of subsection 1 is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.
4. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

14-14.1-21. (210) Appearance of parties and child.

1. In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.
2. If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given under section 14-14.1-07 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.
3. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.
4. If a party to a child custody proceeding who is outside this state is directed to appear under subsection 1 or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

14-14.1-22. (302) Enforcement under Hague convention. Under this chapter a court of this state may enforce an order for the return of the child made under the Hague convention on the civil aspects of international child abduction as if it were a child custody determination.

14-14.1-23. (303) Duty to enforce.

1. A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter, or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter, and the determination has not been modified in accordance with this chapter.
2. A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in this chapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

14-14.1-24. (304) Temporary visitation.

1. A court of this state which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:
 - a. A visitation schedule made by a court of another state; or
 - b. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.
2. If a court of this state makes an order under subdivision b of subsection 1, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in sections 14-14.1-12 through

14-14.1-21. The order remains in effect until an order is obtained from the other court or the period expires.

14-14.1-25. (305) Registration of child custody determination.

1. A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state:
 - a. A letter or other document requesting registration;
 - b. Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
 - c. Except as otherwise provided in section 14-14.1-20, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.
2. On receipt of the documents required by subsection 1, the registering court shall:
 - a. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
 - b. Serve notice upon the persons named pursuant to subdivision c of subsection 1 and provide them with an opportunity to contest the registration in accordance with this section.
3. The notice required by subdivision b of subsection 2 must state that:
 - a. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;
 - b. A hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and
 - c. Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.
4. A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:
 - a. The issuing court did not have jurisdiction under sections 14-14.1-12 through 14-14.1-21;

- b. The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21; or
 - c. The person contesting registration was entitled to notice, but notice was not given in accordance with section 14-14.1-07, in the proceedings before the court that issued the order for which registration is sought.
5. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.
6. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

14-14.1-26. (306) Enforcement of registered determination.

1. A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.
2. A court of this state shall recognize and enforce, but may not modify, except in accordance with sections 14-14.1-12 through 14-14.1-21, a registered child custody determination of a court of another state.

14-14.1-27. (307) Simultaneous proceedings. If a proceeding for enforcement under sections 14-14.1-22 through 14-14.1-37 is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under sections 14-14.1-12 through 14-14.1-21, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

14-14.1-28. (308) Expedited enforcement of child custody determination.

1. A petition under sections 14-14.1-22 through 14-14.1-37 must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.
2. A petition for enforcement of a child custody determination must state:
 - a. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
 - b. Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;

authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

14-14.1-30. (310) Hearing and order.

1. Unless the court issues a temporary emergency order under section 14-14.1-15, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:
 - a. The child custody determination has not been registered and confirmed under section 14-14.1-25 and that:
 - (1) The issuing court did not have jurisdiction under sections 14-14.1-12 through 14-14.1-21;
 - (2) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21; or
 - (3) The respondent was entitled to notice, but notice was not given in accordance with section 14-14.1-07, in the proceedings before the court that issued the order for which enforcement is sought; or
 - b. The child custody determination for which enforcement is sought was registered and confirmed under section 14-14.1-25 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21.
2. The court shall award the fees, costs, and expenses authorized under section 14-14.1-32 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.
3. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.
4. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under sections 14-14.1-22 through 14-14.1-37.

14-14.1-31. (311) Warrant to take physical custody of child.

1. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.
2. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be

removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subsection 2 of section 14-14.1-28.

3. A warrant to take physical custody of a child must:
 - a. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
 - b. Direct law enforcement officers to take physical custody of the child immediately; and
 - c. Provide for the placement of the child pending final relief.
4. The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.
5. A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
6. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

14-14.1-32. (312) Costs, fees, and expenses.

1. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.
2. The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

14-14.1-33. (313) Recognition and enforcement. A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21.

14-14.1-34. (314) Appeals. An appeal may be taken from a final order in a proceeding under sections 14-14.1-22 through 14-14.1-37 in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 14-14.1-24, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

14-14.1-35. (315) Role of state's attorney.

1. In a case arising under this chapter or involving the Hague convention on the civil aspects of international child abduction, the state's attorney may take any lawful action, including resort to a proceeding under sections 14-14.1-22 through 14-14.1-37 or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:
 - a. An existing child custody determination;
 - b. A request to do so from a court in a pending child custody proceeding;
 - c. A reasonable belief that a criminal statute has been violated; or
 - d. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention on the civil aspects of international child abduction.
2. A state's attorney acting under this section acts on behalf of the court and may not represent any party.

14-14.1-36. (316) Role of law enforcement. At the request of a state's attorney acting under section 14-14.1-35, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a state's attorney with responsibilities under section 14-14.1-35.

14-14.1-37. (317) Costs and expenses. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the state's attorney and law enforcement officers under section 14-14.1-35 or 14-14.1-36.

SECTION 2. AMENDMENT. Section 54-55-05 of the North Dakota Century Code is amended and reenacted as follows:

54-55-05. No compensation for commissioners. The commissioners shall serve without compensation for services as commissioners. The commissioners who are appointed to the commission and the commissioners who have been elected life members of the national conference, except those who are appointed by virtue of having served five years on the commission but who have not served at least twenty years in the legislative assembly, are entitled to be reimbursed, from moneys appropriated for that purpose, for necessary expenses incurred in performing their duties at the rates provided in sections 44-08-04 and 54-06-09. Warrant-checks for expense reimbursement must be prepared by the office of management and budget upon vouchers submitted by the commissioners.

SECTION 3. REPEAL. Chapter 14-14 of the North Dakota Century Code is repealed.

Approved March 30, 1999
Filed March 30, 1999

CHAPTER 148

SENATE BILL NO. 2388

(Senators Cook, G. Nelson, W. Stenehjem)
(Representatives R. Kelsch, Mahoney)

ADOPTION INVESTIGATIONS

AN ACT to amend and reenact subsection 5 of section 14-15-11 of the North Dakota Century Code, relating to adoption investigations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹² **SECTION 1. AMENDMENT.** Subsection 5 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

5. An investigation and report is not required in cases in which a stepparent is the petitioner or the person to be adopted is an adult. The department of human services when required to consent to the adoption may give consent without making the investigation. If the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor, the court may waive the investigation and report required under this section. For the purpose of this section, "relative" means any person having the following relationship to the minor by marriage, blood, or adoption: grandparent, brother, sister, stepbrother, stepsister, uncle, or aunt.

Approved April 7, 1999
Filed April 8, 1999

¹¹² Section 14-15-11 was also amended by section 1 of Senate Bill No. 2171, chapter 282.