

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 277

HOUSE BILL NO. 1076

(Judiciary Committee)

(At the request of the Supreme Court)

COURT OF APPEALS EXTENDED

AN ACT to amend and reenact section 15 of chapter 374 of the 1987 Session Laws, as amended by section 1 of chapter 379 of the 1989 Session Laws, section 6 of chapter 24 of the 1993 Session Laws, and section 1 of chapter 294 of the 1995 Session Laws, relating to extending the expiration date for legislation that created a temporary court of appeals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁸ **SECTION 1. AMENDMENT.** Section 15 of chapter 374 of the 1987 Session Laws, as amended by section 1 of chapter 379 of the 1989 Session Laws, section 6 of chapter 24 of the 1993 Session Laws, and section 1 of chapter 294 of the 1995 Session Laws, is amended and reenacted as follows:

SECTION 15. EXPIRATION DATE. This Act is effective through January 1, ~~2000~~ 2004, and after that date is ineffective.

Approved March 8, 1999

Filed March 9, 1999

¹⁹⁸ Section 12.1-01-04 was also amended by section 1 of Senate Bill No. 2211, chapter 120.

CHAPTER 278

HOUSE BILL NO. 1275

(Representatives DeKrey, Delmore, Koppelman)
(Senators W. Stenehjem, Traynor)

CLERK OF COURT DUTIES, RESPONSIBILITIES, AND FUNDING

AN ACT to create and enact chapter 27-05.2 of the North Dakota Century Code, relating to state funding of clerk of district court services; to amend and reenact sections 6-02-05, 11-08-06, 11-08-11, 11-08-14, 11-09.1-04, 11-10-02, 11-10-06, 11-10-10, 11-10-11, 11-19-03, 11-19-16, 11-19-17, 11-19.1-08, 11-20-02, 11-22-01, 11-22-02, 11-22-05, 11-26-01, 11-26-03, 11-26-04, 14-03-09, 14-03-10, 14-03-11, 14-03-17, 14-03-19, 14-03-20, 14-03-21, 14-03-22, 14-03-24, subsection 3 of section 14-15-09, subsection 4 of section 20.1-13.1-08, subsections 4 and 5 of section 20.1-13.1-10, subsection 4 of section 20.1-15-08, subsections 6 and 7 of section 20.1-15-11, sections 23-02.1-06, 23-21.1-02.1, 23-21.1-02.2, 26.1-02-19, subsection 1 of section 26.1-06.1-12, subsection 1 of section 26.1-06.1-17, subsection 1 of section 26.1-06.1-24, subsection 3 of section 26.1-06.1-49, subsection 3 of section 26.1-06.1-50, sections 27-01-01.1, 27-08.1-03, 28-20.1-05, 30.1-11-01, 32-37-05, 35-18-04, 35-21-05, 37-01-34, 37-01-35, subsection 4 of section 39-06.2-10.6, subsection 4 of section 39-20-05, subsections 6 and 7 of section 39-20-07, subsections 4 and 5 of section 39-24.1-08, subsection 1 of section 40-01.1-04, section 40-05.1-05, subsection 1 of section 40-33.1-14, subsection 1 of section 40-61-16, sections 43-01-19, 43-23-16, 43-25-09, 43-49-09, 44-11-01, 46-04-05, 47-18-08, 51-05.1-06, subsection 4 of section 54-40.4-05, sections 57-22-16, and 57-22-32 of the North Dakota Century Code, relating to filing fees, filing requirements, and various functions performed by clerks of district court; to repeal sections 11-17-01, 11-17-02, 11-17-03, 11-17-04, 11-17-05, 11-17-06, 11-17-07, 11-17-08, 11-17-09, 11-17-10, and 11-17-11 of the North Dakota Century Code, relating to duties, responsibilities, and funding of clerks of district court; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-02-05 of the North Dakota Century Code is amended and reenacted as follows:

6-02-05. (Effective January 1, 2001) Acknowledgment of organization certificate - Application for certificate of authority - Notice of hearing. The organization certificate must be acknowledged before ~~the clerk of some court of record or~~ a notary public, and, together with the acknowledgment thereof, must be authenticated by the seal of ~~such court or~~ the notary. The same thereupon must be transmitted to the state banking board with a request for permission to present the same to the secretary of state, with application ~~to him~~ for the issuance of a certificate of authority. Upon receiving such organization certificate, the board shall cause notice of the application therefor to be published in the official newspaper of the county within which such association is proposed to be established. Such notice must contain a statement of a time when and place where the board will hear such application and must specify that any person objecting thereto may appear and show

cause why such application should not be approved. Upon the consolidation of banks, acquisition pursuant to section 6-07-04.2, or the conversion of a national bank to a state bank, notice of such hearing need not be given.

SECTION 2. AMENDMENT. Section 11-08-06 of the North Dakota Century Code is amended and reenacted as follows:

11-08-06. (Effective January 1, 2001) Officers in county adopting consolidated office form of government. In addition to the board of county commissioners provided for by this title, the officers in a county which has adopted the county consolidated office form of government are as follows:

1. One county auditor who shall be ex officio register of deeds and, unless the clerk of district court serving the county is an employee of the state judicial system, ex officio clerk of the district court.
2. One state's attorney.
3. One sheriff.
4. One county treasurer, unless the office with its attendant powers and duties is combined with and conferred upon the county auditor by the board of county commissioners but no added compensation may be paid the county auditor in said capacity.
5. Repealed by S.L. 1989, ch. 137, § 10, effective January 1, 1993.
6. One coroner.

SECTION 3. AMENDMENT. Section 11-08-11 of the North Dakota Century Code is amended and reenacted as follows:

11-08-11. (Effective January 1, 2001) Powers and duties of county auditor. The county auditor, in addition to the duties and powers conferred by law on that officer, shall perform the duties and functions and exercise the powers conferred on the register of deeds and, subject to subsection 1 of section 11-08-06, the clerk of the district court. The auditor shall be the chief administrative officer of the county. The board of county commissioners may delegate to the county auditor such duties of an administrative or executive nature as are not specifically conferred by law upon other officers. Such delegated duties shall be exercised by the county auditor under the supervision of the board of county commissioners.

SECTION 4. AMENDMENT. Section 11-08-14 of the North Dakota Century Code is amended and reenacted as follows:

11-08-14. (Effective January 1, 2001) Deputies and employees - Appointment - Compensation - Terms. Subject to the approval of the board of county commissioners, the county auditor may appoint a deputy auditor, a deputy register of deeds, and, subject to subsection 1 of section 11-08-06, a deputy clerk of the district court. The compensation of any such deputy appointed pursuant to this section shall be fixed by the board of county commissioners. The same person may be appointed to serve as deputy in two or more offices. Subject to the approval of the board of county commissioners, the county auditor may employ such clerks, stenographers, and other county employees as may be required to perform the duties of the several offices under the auditor's direction. The compensation of the employees shall be fixed by the board of county commissioners. Any deputy or

employee shall serve at the pleasure of the county auditor and may be appointed or employed to serve on a part-time basis.

SECTION 5. AMENDMENT. Section 11-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-04. (Effective January 1, 2001) Ratification by majority vote - Supersession of existing charter and conflicting state laws - Filing of copies of new charter. If a majority of the qualified electors voting on the charter at the election vote in favor of the home rule charter, it is ratified and becomes the organic law of the county on the first day of January or July next following the election, and extends to all its county matters. The charter and the ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city. The charter may not authorize the enactment of ordinances to diminish the authority of a board of supervisors of a township or to change the structure of township government in any organized civil township, without the consent of the board of supervisors of the township. No ordinance of a home rule county shall supersede section 49-22-16. One copy of the charter as ratified and approved must be filed with the secretary of state; one with the clerk register of district court deeds for the county, unless the board of county commissioners designates a different official; and one with the auditor of the county to remain as a part of its permanent records. Courts shall take judicial notice of the charter.

SECTION 6. AMENDMENT. Section 11-10-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-02. Number and election of county officers. Each organized county, unless it has adopted one of the optional forms of county government provided by the code or has combined or separated the functions of county offices or redesignated offices as elective or appointive pursuant to chapter 11-10.2 or 11-10.3, must have the following officers:

1. One county auditor.
2. One register of deeds.
3. One clerk of the district court, except as otherwise provided by this section.
4. One state's attorney.
5. One sheriff.
6. One county treasurer.
7. One coroner.
8. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of six thousand or less, the register of deeds ~~shall perform the functions of the~~ also serves as ex officio clerk of the district court, unless the board of county commissioners adopts a resolution separating the offices no less

than thirty days before petitions for nomination to county offices may first be filed for the primary election. In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election. ~~For a county that has properly initiated the option pursuant to section 11-17-11, and the office of the clerk of court is funded by the legislative assembly, the board of county commissioners may provide for the functions of the register of deeds, which may include functions of the clerk of district court and other functions as determined by the board of county commissioners. Counties having a population of six thousand or less and exercising the option provided in section 11-17-11 may contract with the state court administrator for the provision of shared funding for register of deeds' services. The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, and clerk of the district court, who must be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who must be chosen in the manner prescribed in section 11-11-02, and the county coroner, who must be chosen in the manner prescribed in section 11-19.1-03. The clerk of district court elected pursuant to this section is not subject to election in any future general election that occurs after the start of the state biennium after the county has properly initiated the option and the legislative assembly has provided appropriations pursuant to section 11-17-11.~~

¹⁹⁹ **SECTION 7. AMENDMENT.** Section 11-10-02 of the North Dakota Century Code as amended in section 6 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-10-02. (Effective January 1, 2003) Number and election of county officers.

Each organized county, unless it has adopted one of the optional forms of county government provided by the code or has combined or separated the functions of county offices or redesignated offices as elective or appointive pursuant to chapter 11-10.2 or 11-10.3, must have the following officers:

1. One county auditor.
2. One register of deeds.
3. One clerk of the district court, except as otherwise provided by this section.
4. One state's attorney.
5. 4. One sheriff.
6. 5. One county treasurer.
7. 6. One coroner.

¹⁹⁹ Section 11-10-02 was also amended by section 11 of Senate Bill No. 2390, chapter 98.

8. 7. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of six thousand or less, the register of deeds also serves as ex officio clerk of the district court; ~~unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election. In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election.~~ The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, and state's attorney; ~~and clerk of the district court,~~ who must be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who must be chosen in the manner prescribed in section 11-11-02, and the county coroner, who must be chosen in the manner prescribed in section 11-19.1-03.

SECTION 8. AMENDMENT. Section 11-10-06 of the North Dakota Century Code is amended and reenacted as follows:

11-10-06. Bonds of county officers. Before entering upon the duties of their respective offices, the following county officers must be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, clerk of the district court, register of deeds, and sheriff, fifteen thousand dollars, except in counties having a population of less than ten thousand, where the amount must be ten thousand dollars.
2. A county commissioner, two thousand dollars.
3. The county coroner, five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, an amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners.
6. The public administrator, not less than ten thousand dollars.
7. The county treasurer, an amount fixed by the board of county commissioners of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand, an amount of not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond may be in a sum equal to the amount of taxes to be collected.
8. Repealed by S.L. 1989, ch. 137, § 10, effective January 1, 1993.

When the amount of any bond required under this section is dependent upon the population of a county, the population must be determined as provided in section

11-10-10. ~~The bond for the clerk of a district court which is state funded pursuant to section 11-17-11 must be set by the supreme court.~~

SECTION 9. AMENDMENT. Section 11-10-06 of the North Dakota Century Code as amended in section 8 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-10-06. (Effective January 1, 2003) Bonds of county officers. Before entering upon the duties of their respective offices, the following county officers must be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, ~~clerk of the district court~~, register of deeds, and sheriff, fifteen thousand dollars, except in counties having a population of less than ten thousand, where the amount must be ten thousand dollars.
2. A county commissioner, two thousand dollars.
3. The county coroner, five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, an amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners.
6. The public administrator, not less than ten thousand dollars.
7. The county treasurer, an amount fixed by the board of county commissioners of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand, an amount of not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond may be in a sum equal to the amount of taxes to be collected.
8. Repealed by S.L. 1989, ch. 137, § 10, effective January 1, 1993.

When the amount of any bond required under this section is dependent upon the population of a county, the population must be determined as provided in section 11-10-10.

²⁰⁰ **SECTION 10. AMENDMENT.** Section 11-10-10 of the North Dakota Century Code is amended and reenacted as follows:

11-10-10. Salaries of county officers.

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, clerk of district court, and sheriff must be regulated by the population in the respective counties

²⁰⁰ Section 11-10-10 was also amended by section 1 of House Bill No. 1362, chapter 99.

according to the last preceding official federal census from and after the date when the official report of such census has been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, must be at least the minimum amount payable for that office when filled on a full-time basis in the future.

2. The county treasurer, county superintendent of schools, register of deeds, county auditor, and clerk of district court each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Seventeen thousand dollars in counties having a population of less than eight thousand.
 - b. Seventeen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

~~The compensation for the clerk of a district court which is funded by the state pursuant to section 11-17-14 must be set by the supreme court as a part of the judicial branch personnel system.~~

3. Repealed by S.L. 1975, ch. 87, § 2.
4. The county superintendent of schools is entitled to receive for any trips necessarily made within the county in the performance of school district reorganization duties the same mileage received under section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.
5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of ten thousand dollars in counties with a population in excess of ten thousand and a maximum of nine thousand three hundred dollars in counties with a population of ten thousand or less. In addition, there must be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses must be at the same rate as provided by

section 11-10-15, and must be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it must be paid in monthly installments.

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Nineteen thousand nine hundred dollars in counties having a population with less than eight thousand.
 - b. Twenty thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
7. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive forty-five thousand dollars, but the county may increase that amount up to the same salary as a county court judge. State's attorneys not considered full time shall receive an annual salary of at least forty-five percent of the minimum salary paid to a full-time state's attorney.

²⁰¹ **SECTION 11. AMENDMENT.** Section 11-10-10 of the North Dakota Century Code as amended in section 10 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-10-10. (Effective January 1, 2003) Salaries of county officers.

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, ~~clerk of district court~~, and sheriff must be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census has been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, must be at least the minimum

²⁰¹ Section 11-10-10 was also amended by section 1 of House Bill No. 1362, chapter 99, and section 10 of House Bill No. 1275, chapter 278.

amount payable for that office when filled on a full-time basis in the future.

2. The county treasurer, county superintendent of schools, register of deeds, county auditor, ~~and clerk of district court~~ each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Seventeen thousand dollars in counties having a population of less than eight thousand.
 - b. Seventeen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
3. Repealed by S.L. 1975, ch. 87, § 2.
4. The county superintendent of schools is entitled to receive for any trips necessarily made within the county in the performance of school district reorganization duties the same mileage received under section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.
5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of ten thousand dollars in counties with a population in excess of ten thousand and a maximum of nine thousand three hundred dollars in counties with a population of ten thousand or less. In addition, there must be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses must be at the same rate as provided by section 11-10-15, and must be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it must be paid in monthly installments.

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:

- a. Nineteen thousand nine hundred dollars in counties having a population with less than eight thousand.
 - b. Twenty thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
7. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive forty-five thousand dollars, but the county may increase that amount up to the same salary as a county court judge. State's attorneys not considered full time shall receive an annual salary of at least forty-five percent of the minimum salary paid to a full-time state's attorney.

SECTION 12. AMENDMENT. Section 11-10-11 of the North Dakota Century Code is amended and reenacted as follows:

11-10-11. Appointment and salary of deputies and clerks. The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section. ~~The number and compensation of deputies, clerks, and assistants for a clerk of district court which is funded by the state pursuant to section 11-17-14 must be set by the supreme court.~~

SECTION 13. AMENDMENT. Section 11-10-11 of the North Dakota Century Code as amended in section 12 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-10-11. (Effective January 1, 2003) Appointment and salary of deputies and clerks. The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, ex officio clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section.

SECTION 14. AMENDMENT. Section 11-19-03 of the North Dakota Century Code is amended and reenacted as follows:

11-19-03. (Effective January 1, 2001) If inquest not held - Certificate filed. If the coroner does not deem it necessary to hold an inquest in a case brought to the coroner's attention, the coroner shall file a certificate setting forth all the facts in relation to the case with the clerk register of the district court deeds of the county within which the dead body is found a certificate setting forth all the facts in relation to the case, unless the board of county commissioners designates a different official.

SECTION 15. AMENDMENT. Section 11-19-16 of the North Dakota Century Code is amended and reenacted as follows:

11-19-16. (Effective January 1, 2001) Testimony at coroner's inquest to be reduced to writing - Records, where filed. The testimony of all witnesses examined before the coroner's jury shall be reduced to writing by the coroner or under the coroner's direction, and shall be subscribed by the witnesses, respectively. The coroner shall file the testimony, together with a record of all proceedings had before the coroner, in the office of the clerk register of the district court deeds of the county within which the inquest was held, unless the board of county commissioners designates a different official.

SECTION 16. AMENDMENT. Section 11-19-17 of the North Dakota Century Code is amended and reenacted as follows:

11-19-17. Clerk of district court to file (Effective January 1, 2001) Filing of coroner proceedings of coroner. The clerk register of the district court deeds, unless the board of county commissioners designates a different official, shall file, index, and enter in a book kept for that purpose, the proceedings of the coroner ~~in the same manner as proceedings in civil actions are entered.~~

SECTION 17. AMENDMENT. Section 11-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-08. (Effective January 1, 2001) Records of coroner's office. It is the duty of the coroner to keep a full and complete record and to fill in the cause of death upon the death certificate in all cases coming under the coroner's jurisdiction. All records must be kept in the office of the coroner, if the coroner maintains an office as coroner, and if the coroner maintains no separate office, then in the office of the clerk register of the district court deeds of the county, unless the board of county commissioners designates a different official, and must be properly indexed, stating the name, if known, of every deceased person, the place where the body was found, date of death, cause of death, and all other available information required by this chapter. The report of the coroner and the detailed findings of the autopsy, if one was performed, must be attached to the report of every case. The coroner shall promptly deliver or cause to be delivered to the state's attorney of the county in which a death occurred copies of all necessary records relating to every death in which the coroner or state's attorney determines further investigation advisable. The sheriff of the county, the police of the city, or the state highway patrolmen on duty in that county in which the death occurred may be requested to furnish more information or make further investigation by the coroner or the coroner's deputy. The state's attorney may obtain from the office of the coroner copies of records and other information necessary for further investigation. All records of the coroner shall become and remain the property of the county and are public records.

SECTION 18. AMENDMENT. Section 11-20-02 of the North Dakota Century Code is amended and reenacted as follows:

11-20-02. (Effective January 1, 2001) Deputies - Appointment - Removal. The county surveyor may appoint one or more deputies and may revoke any such appointment at pleasure. An appointment or revocation shall be in writing, signed by the surveyor, and filed with the clerk register of the district court deeds, unless the board of county commissioners designates a different official. Each deputy shall take the constitutional oath of office and may perform any duties imposed by law upon the county surveyor. The surveyor and the surveyor's sureties shall be

responsible for the faithful performance of the duties of the surveyor's office by any deputy.

SECTION 19. AMENDMENT. Section 11-22-01 of the North Dakota Century Code is amended and reenacted as follows:

11-22-01. (Effective January 1, 2001) Sheriff, clerk of court, public administrator may deposit funds entrusted to them with county treasurer. Any and all funds, other than fees and taxes, received by any sheriff, clerk of the district court who is not an employee of the state judicial system, or public administrator by virtue of the office may be paid over and delivered to the treasurer of the county. Upon the delivery of the money to the treasurer, the officer depositing the same shall be absolved from all liability for the safekeeping of the funds.

SECTION 20. AMENDMENT. Section 11-22-01 of the North Dakota Century Code as amended in section 19 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-22-01. (Effective January 1, 2001-2003) Sheriff, clerk of court, public administrator may deposit funds entrusted to them with county treasurer. Any and all funds, other than fees and taxes, received by any sheriff, ex officio clerk of the district court ~~who is not an employee of the state judicial system~~, or public administrator by virtue of the office may be paid over and delivered to the treasurer of the county. Upon the delivery of the money to the treasurer, the officer depositing the same shall be absolved from all liability for the safekeeping of the funds.

SECTION 21. AMENDMENT. Section 11-22-02 of the North Dakota Century Code is amended and reenacted as follows:

11-22-02. (Effective January 1, 2001) Treasurer's receipt - Special funds provided for deposits. The county treasurer shall deliver a receipt to the ~~sheriff, clerk of the district court, or public administrator~~ officer making a deposit under the provisions of this chapter and shall deliver a copy of each such receipt to the county auditor immediately. The treasurer shall place the sum deposited in a special fund provided for that purpose or in a separate special fund maintained for each county officer making such deposits. The treasurer shall be vested with the same rights, duties, and liabilities with respect to deposits made under this chapter as with respect to public funds in the treasurer's hands as county treasurer.

SECTION 22. AMENDMENT. Section 11-22-05 of the North Dakota Century Code is amended and reenacted as follows:

11-22-05. (Effective January 1, 2001) Neglect of duty - Liability. If the ~~sheriff, clerk of the district court, or public administrator~~ an officer identified in section 11-22-01 fails to deposit with the county treasurer money which the officer receives by virtue of the office or makes or delivers, or causes to be made or delivered, any order for the withdrawal of the deposit except to the person, firm, corporation, or limited liability company entitled to receive the same, that officer shall be liable upon that officer's bond to any person suffering loss thereby.

SECTION 23. AMENDMENT. Section 11-26-01 of the North Dakota Century Code is amended and reenacted as follows:

11-26-01. (Effective January 1, 2001) Debt adjustment board - Members - Appointment - Oath. The judges of the district courts of the several judicial districts of the state shall appoint, by joint action of the judges within each judicial district, a

debt adjustment board for each county within the district. The board shall consist of not less than three nor more than seven members who shall serve at the pleasure of the district judges of the district within which the county is located, and who, before entering upon the duties of their office, shall take and file with the ~~clerk~~ register of the district court deeds, unless the board of county commissioners designates a different official, the oath of office prescribed for civil officers.

SECTION 24. AMENDMENT. Section 11-26-03 of the North Dakota Century Code is amended and reenacted as follows:

11-26-03. Clerk of court to act as secretary (Effective January 1, 2001)
Secretary of board. The ~~clerk~~ register of the district court, personally or by a deputy designated by the clerk deeds, unless the board of county commissioners designates a different official, shall act as secretary of the debt adjustment board. The expenses incurred by the ~~clerk~~ register of deeds, or designated official, in sending out notices and performing other acts prescribed by this chapter shall be defrayed out of funds available for payment of expenses in official business ~~carried on as clerk of the district court.~~

²⁰² **SECTION 25. AMENDMENT.** Section 11-26-04 of the North Dakota Century Code is amended and reenacted as follows:

11-26-04. (Effective January 1, 2001) Meetings of board, when held - Fees. Whenever a debtor or creditor calls for assistance upon the debt adjustment board of the county within which the debtor resides and pays to the ~~clerk~~ register of the district court deeds, unless the board of county commissioners designates a different official, a filing fee as ~~prescribed in subdivision d of subsection 4 of section 11-17-04~~ of ten dollars, such clerk the register of deeds, or designated official, shall call a meeting of the debtor and the debtor's creditors with the board at the earliest possible date. The ~~clerk~~ register of deeds, or designated official, shall notify the members of the board and the debtor and creditors of the time and place of such meeting. If a debtor requesting a meeting makes and files an affidavit stating that the debtor is financially unable to pay the fee provided for in this section, the payment thereof shall be waived.

SECTION 26. AMENDMENT. Section 14-03-09 of the North Dakota Century Code is amended and reenacted as follows:

14-03-09. (Effective January 1, 2001) Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record;¹ municipal judges; ~~clerks; registers of district court,~~ deeds, unless the board of county commissioners designates a different official; ordained ministers of the gospel;² priests; ~~and;~~ ¹ clergy licensed by recognized denominations pursuant to chapter 10-33;² and by any person authorized by the rituals and practices of any religious persuasion.

SECTION 27. AMENDMENT. Section 14-03-10 of the North Dakota Century Code is amended and reenacted as follows:

14-03-10. (Effective January 1, 2001) Marriage may not be solemnized without license. A person may not solemnize any marriage until the parties to the

²⁰² Section 11-26-04 was also amended by section 2 of House Bill No. 1042, chapter 107.

marriage produce a license regularly issued not more than sixty days before the date of the marriage by:

1. A clerk register of district court deeds serving the county in which either of the contracting parties resides or is temporarily domiciled, unless the board of county commissioners designates a different official;
2. A clerk register of district court deeds serving the county in which a parent of either of the parties resides or is temporarily domiciled, unless the board of county commissioners designates a different official; or
3. A clerk register of district court deeds serving the county in which the marriage is to be solemnized, unless the board of county commissioners designates a different official.

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

SECTION 28. AMENDMENT. Section 14-03-11 of the North Dakota Century Code is amended and reenacted as follows:

14-03-11. (Effective January 1, 2001) Who issues marriage license to clerk of district court official. When a clerk of district court an official authorized to issue a marriage license desires to have a license for the clerk's official's own marriage issued in the county of the clerk's official's residence, the clerk official may request another clerk of district court authorized official to act in the clerk's official's stead upon the application for the license. The other clerk of district court official has the power and authority to issue the license in the county of the residence of the clerk official seeking the license. The request must be in writing and must be filed, with the application and other related papers, and must be recorded in the marriage record. Upon the return of the license, the clerk of district court official serving the county in which it was issued may record it and note the record thereon notwithstanding the clerk official is one of the contracting parties named in the license.

SECTION 29. AMENDMENT. Section 14-03-17 of the North Dakota Century Code is amended and reenacted as follows:

14-03-17. (Effective January 1, 2001) Application for license.

1. When application is made to a clerk register of district court deeds, unless the board of county commissioners designates a different official, for a marriage license, the clerk register of deeds, or designated official, shall inquire of the applicant upon oath concerning the legality of the contemplated marriage. The clerk register of deeds, or designated official, may examine other witnesses upon oath. The facts concerning the legality of the marriage may be submitted to the clerk register of deeds, or designated official, by affidavit. The clerk register of deeds, or designated official, also shall require each applicant to submit the following facts upon blanks provided by the county, together with documentary evidence of age:
 - a. An affidavit by each of the applicants showing that each is over the age of eighteen years. In addition, each applicant shall exhibit to the clerk register of deeds, or designated official, a birth certificate

or other satisfactory evidence of age. If either applicant is under the age of eighteen years, the ~~clerk~~ register of deeds, or designated official, shall require the written consent ~~under oath~~ of:

- (1) Either parent of the minor applicant, if the parents are living together;
 - (2) The parent having the legal custody of the minor applicant, if the parents are not living together;
 - (3) The surviving parent, if one of the parents of the minor applicant is deceased; or
 - (4) The guardian, or person under whose care and government the minor applicant is, if both parents of the minor applicant are deceased, or if a person other than a parent has legal and actual custody of the minor applicant.
- b. An affidavit showing whether either or both of the parties have been divorced. If a decree of divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the application. A license shall not be issued if it contravenes any provisions of the divorce decree.
2. All affidavits must be subscribed and sworn to before a person authorized to administer oaths. The ~~clerk~~ register of deeds, or designated official, shall retain on file ~~in the clerk's office~~ all papers and records pertaining to all marriage licenses. Anyone knowingly swearing falsely to the statements contained in any affidavit mentioned in this section is subject to the penalty provided in section 14-03-28.
 3. Each application for a marriage license must also contain a statement regarding surname options which is consistent with section 14-03-20.1.
 4. Each application for a marriage license must contain the social security number of each applicant.

SECTION 30. AMENDMENT. Section 14-03-19 of the North Dakota Century Code is amended and reenacted as follows:

14-03-19. (Effective January 1, 2001) License issued to all who comply with law. If a ~~clerk~~ register of district court deeds, unless the board of county commissioners designates a different official, is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, then the ~~clerk~~ register of deeds, or designated official, shall issue and sign a marriage license in duplicate and affix ~~the clerk's~~ an official seal to both the original and the duplicate.

²⁰³ **SECTION 31. AMENDMENT.** Section 14-03-20 of the North Dakota Century Code is amended and reenacted as follows:

²⁰³ Section 14-03-20 was also amended by section 6 of House Bill No. 1044, chapter 51.

14-03-20. (Effective January 1, 2001) License and certificate. The marriage license and certificate of the person solemnizing the marriage must be upon one blank form in duplicate consisting of two pages with a perforated seam to make it readily detachable. The form must be substantially as follows:

MARRIAGE LICENSE

State of North Dakota)
) ss.
County of _____)

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

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

Dated at _____ this _____ day of _____, 19____.
(Seal)

Clerk of District Court Register of Deeds/Designated Official

CERTIFICATE OF MARRIAGE

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

In the presence of
_____)
_____)
Witnesses

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

SECTION 32. AMENDMENT. Section 14-03-21 of the North Dakota Century Code is amended and reenacted as follows:

14-03-21. License (Effective January 1, 2001) Return of license and certificate returned to clerk of district court - Duplicate delivered to persons married - Records kept - Penalty. When a person authorized by law solemnizes a marriage, that person shall fill out and sign the certificate following the license in duplicate, giving the person's official title, or if a minister of the gospel or priest, the ecclesiastical body with which the minister or priest is connected. The original copy of the certificate and license must be returned to the clerk of district court official who issued the license within five days after the date of the solemnization of the marriage and the duplicate copy must be immediately delivered to the persons married. The clerk official shall file the original copy in the clerk's office and retain it as part of the clerk's records an official record. Any person who willfully neglects to make such return within the time required is subject to the penalty provided in section 14-03-28.

SECTION 33. AMENDMENT. Section 14-03-22 of the North Dakota Century Code is amended and reenacted as follows:

14-03-22. (Effective January 1, 2001) Marriage license fee - Supplemental fee - Fee for marriage ceremony - Duties of officers. For the issuance and filing of a marriage license, the clerk register of district court deeds, unless the board of county commissioners designates a different official, shall collect the sum of six dollars from the party applying for the license. The clerk register of deeds, or designated official, shall also collect from the applicant a supplemental fee of twenty-nine dollars for aid to victims of domestic violence through the domestic violence prevention fund in accordance with chapter 14-07.1. For performing a marriage ceremony during regular courthouse hours, the clerk register of deeds, or designated official, shall collect a fee of thirty dollars which is to be retained by the county. If the marriage ceremony is performed ~~by the clerk~~ at a time other than during regular courthouse hours, the clerk register of deeds, or designated official, may collect and retain a fee in an amount to be determined by the clerk register of deeds, or designated official. Except as provided in this section, all collected fees must be deposited monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The clerk register of deeds, or designated official, shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in the registrar's office for that purpose. The registrar shall index the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

SECTION 34. AMENDMENT. Section 14-03-24 of the North Dakota Century Code is amended and reenacted as follows:

14-03-24. (Effective January 1, 2001) Certified record is evidence. The books of record of marriage licenses issued and certificates returned which are kept by a clerk register of district court deeds, unless the board of county commissioners designates a different official, serving any county, or certified copies of such entries certified by the clerk under the clerk's seal, and certified copies of the records of the registrar of vital statistics, must be received as evidence in all courts, and are prima facie evidence in all courts and places of the facts stated therein.

SECTION 35. AMENDMENT. Subsection 3 of section 14-15-09 of the North Dakota Century Code is amended and reenacted as follows:

3. Any person filing a petition shall pay to the clerk of court a filing fee as prescribed in subsection 1 of section ~~14-17-04~~ 27-05.2-03.

SECTION 36. AMENDMENT. Subsection 4 of section 20.1-13.1-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the state toxicologist or a game warden or a law enforcement officer, a certified copy of the checklist and test records

received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the state toxicologist, or the clerk register of district court deeds, are regularly kept records of the director unless the board of county commissioners has designated a different official to maintain the certificate.

²⁰⁴ **SECTION 37. AMENDMENT.** Subsections 4 and 5 of section 20.1-13.1-10 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the clerk register of the district court deeds in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

5. Copies of the records referred to in subsections 3 and 4, certified by the clerk register of the district court deeds, or designated official, must be admitted as prima facie evidence of the matters stated in the records.

SECTION 38. AMENDMENT. Subsection 4 of section 20.1-15-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents

²⁰⁴ Section 20.1-13.1-10 was also amended by section 2 of Senate Bill No. 2345, chapter 358.

without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the state toxicologist or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the state toxicologist, or the ~~clerk register of district court deeds~~, are regularly kept records of the director unless the board of county commissioners has designated a different official to maintain the certificate.

²⁰⁵ **SECTION 39. AMENDMENT.** Subsections 6 and 7 of section 20.1-15-11 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the ~~clerk register of the district court deeds~~ in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

7. Copies of the records referred to in subsections 5 and 6, certified by the ~~clerk register of the district court deeds~~, or designated official, must be admitted as prima facie evidence of the matters stated in the records.

²⁰⁵ Section 20.1-15-11 was also amended by section 5 of Senate Bill No. 2345, chapter 358.

SECTION 40. AMENDMENT. Section 23-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-06. (Effective January 1, 2001) Registration districts. Each county of this state constitutes a registration district for purposes of this chapter, and the ~~clerk register of each district court in this state deeds, unless the board of county commissioners designates a different official, is hereby~~ designated as a local registrar. The local registrar may appoint one or more deputy local registrars for each registration district.

SECTION 41. AMENDMENT. Section 23-21.1-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-21.1-02.1. (Effective January 1, 2001) License to operate a perpetual care cemetery - Fee. No organization may operate as a perpetual care cemetery unless licensed on forms provided by the state department of health and consolidated laboratories by the clerk register of court deeds of the county within which the cemetery is located ~~on forms provided by the state department of health, unless the board of county commissioners designates a different official.~~ The license must be renewed by or before July first of each year. Prior to issuance or renewal of a license, the ~~county clerk register of court deeds, or designated official,~~ shall determine if the applicant is in full compliance with the provisions of this chapter. When applying for a license renewal, the applicant shall report to the ~~county clerk register of court deeds, or designated official,~~ the number of spaces sold, the gross amount of receipts from the sale of spaces, and the amount of money transferred to the perpetual care trust fund during the organization's previous fiscal year. The license fee must be five dollars per year, except that any perpetual care cemetery which has sold less than ten spaces during the previous fiscal year may not be required to pay a license fee.

SECTION 42. AMENDMENT. Section 23-21.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

23-21.1-02.2. ~~When county clerk of court shall revoke or refuse to renew~~ (Effective January 1, 2001) Revocation or nonrenewal of license to operate a perpetual care cemetery. The ~~county clerk register of court deeds, or designated official,~~ shall revoke or refuse to renew a license to operate a perpetual care cemetery if such organization fails to comply with the provisions of this chapter. When the ~~county clerk register of court deeds, or designated official,~~ revokes or refuses to renew a license to operate a perpetual care cemetery, ~~he shall publish a notice of such the action must be published~~ in the official county newspaper of the county wherein the cemetery is located. When an organization's license to operate a perpetual care cemetery is not current or has been revoked, the organization shall cease to make sales or transfers of burial spaces.

²⁰⁶ **SECTION 43. AMENDMENT.** Section 26.1-02-19 of the North Dakota Century Code is amended and reenacted as follows:

²⁰⁶ Section 26.1-02-19 was also amended by section 3 of House Bill No. 1042, chapter 107.

26.1-02-19. (Effective January 1, 2001) Fees. Any person filing a foreign decree shall pay a filing fee as prescribed in subdivision d of subsection 1 of section ~~44-17-04~~ 27-05.2-03 to the clerk of court. Fees for docketing, transcriptions, or other enforcement proceedings are as provided for decrees of the district court.

SECTION 44. AMENDMENT. Subsection 1 of section 26.1-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and successor commissioners in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the ~~clerk of the district court or~~ register of deeds, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds, or designated official. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

SECTION 45. AMENDMENT. Subsection 1 of section 26.1-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

1. An order to liquidate the business of a domestic insurer must appoint the commissioner and successor commissioners in office as liquidator and must direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator must be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the ~~clerk of the district court and the~~ register of deeds, unless the board of county commissioners designates a different official, of the county in which its principal office or place of business is located or, in the case of real estate, with the register of deeds of the county where the property is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds, or designated official.

SECTION 46. AMENDMENT. Subsection 1 of section 26.1-06.1-24 of the North Dakota Century Code is amended and reenacted as follows:

1. As soon as practicable after the liquidation order, but not later than one hundred twenty days thereafter, unless extended by order of the court, the liquidator shall prepare in duplicate a list of the insurer's assets. The list must be amended or supplemented from time to time as the liquidator may determine. One copy must be filed in the office of the ~~clerk register of the district court~~ deeds, unless the board of county commissioners designates a different official, and one copy must be retained for the liquidator's files. All amendments and supplements must be similarly filed.

SECTION 47. AMENDMENT. Subsection 3 of section 26.1-06.1-49 of the North Dakota Century Code is amended and reenacted as follows:

3. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the ~~clerk of the district court or the~~ register of deeds, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds, or designated official.

SECTION 48. AMENDMENT. Subsection 3 of section 26.1-06.1-50 of the North Dakota Century Code is amended and reenacted as follows:

3. If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the ~~clerk of the district court or the~~ register of deeds, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds, or designated official.

SECTION 49. AMENDMENT. Section 27-01-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-01-01.1. Budgeting and financing of the supreme court and district courts.

The state court administrator shall submit a comprehensive budget for the supreme court and the district courts to the legislative assembly. An informational copy of the budget must be delivered to the director of the budget pursuant to section 54-44.1-13. The budget for the district courts must include all salary and expenses for the district courts, including the juvenile courts, and their employees ~~except the clerks of district courts and their deputies and employees, whose salaries and expenses must be paid by the counties unless the county has properly exercised its option pursuant to section 41-17-11.~~ Each county shall provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel and appropriate facilities for clerk of court services that are state funded pursuant to section ~~41-17-11~~ 27-05.2-02. Any equipment, furnishings, and law libraries in the control and custody of the district court on January 1, 1980, and any such property acquired from that date until July 1, 1981, must continue to be in district court's custody and control until the state court administrator determines such items are no longer needed by the court. ~~Any equipment and furnishings in the control and custody of a clerk of district court on the date of the exercise of the county option pursuant to section 41-17-11, and any such property acquired from that date until the beginning of the next state biennium, must continue in the district court's custody and control until the state court administrator determines such items are no longer needed by the judicial system. Upon that determination custody and control of the property must revert back to the county.~~

²⁰⁷ **SECTION 50.** Chapter 27-05.2 of the North Dakota Century Code is created and enacted as follows:

27-05.2-01. Statement of intent. It is the intent of the legislative assembly that adequate and proper judicial services, including clerk of district court services, be provided in each county in this state. It is also the intent of the legislative assembly that funding for clerk of district court services be provided by the state judicial system within the limits of legislative appropriations and in cooperation with the several boards of county commissioners of the various counties in this state.

27-05.2-02. State funding of clerk of district court services - Agreements to provide services - Transition schedule.

1. Except as provided in subsection 2, the supreme court, within the limits of legislative appropriations and pursuant to subsection 7, shall provide clerk of district court services in each county in the state. The supreme court may provide such services through clerks of district court, deputies, and assistants who are employees of the judicial system or through service agreements under subsection 6. The supreme court shall develop standards and procedures to ensure that adequate clerk of district court services are provided. "Clerk of district court services" means those duties and services, as provided by statute or rule of the supreme court, that directly serve the judicial system and the provision of effective and efficient judicial services to the public. Beginning January 1, 2003, the individual designated by a board of county commissioners to provide clerk of district court services under subsection 2 or 6 serves as ex officio clerk of district court. The salary and bond for the ex officio clerk of district court must be fixed by a resolution adopted by the board of county commissioners.
2. A county may elect to provide clerk of district court services at the county's own expense. The board of county commissioners shall forward to the supreme court a resolution indicating its election to provide services under this subsection. Such services must be provided in a manner consistent with standards and procedures established by the supreme court. If the county is unable to provide adequate clerk of district court services, the supreme court shall provide for those services in any manner it considers appropriate. If a county has entered into an agreement under subsection 6, the county may not provide clerk of district court services under this subsection until after the agreement has expired.
3. In a county in which the supreme court determines that at least two full-time employees are necessary to provide adequate clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system if the board of county commissioners consents to the transition after consultation with the elected clerk. This subsection

²⁰⁷ Section 27-05.2-02 was amended by section 1 of House Bill No. 1382, chapter 291. Section 27-05.2-04 was amended by section 51 of House Bill No. 1275, chapter 278. Section 27-05.2-07 was amended by section 52 of House Bill No. 1275, chapter 278.

applies upon receipt by the supreme court of a resolution adopted by the board of county commissioners indicating its consent. Any equipment, including technology related equipment, and furnishings in the control and custody of the clerk of district court on the date the clerk becomes a state employee must remain in the control and custody of the clerk until the state court administrator determines the items are no longer needed. The clerk, upon becoming a state employee, shall receive a salary in an amount not less than the salary received as a county employee and shall remain an employee of the state judicial system until the clerk retires, resigns, or the term for which the clerk was initially elected expires, whichever occurs earlier. Thereafter, the clerk of district court must be appointed in the manner provided by supreme court rule. The bond for the clerk of district court must be set by the supreme court. If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county must provide clerk of district court services at its own expense in accordance with subsection 2.

4. In a county in which the supreme court determines that one or more, but less than two, full-time employees are necessary to provide clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system in the manner described in subsection 3. If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county may provide clerk of district court services at its own expenses under subsection 2 or the supreme court may provide funding for clerk of district court services in accordance with an agreement under subsection 6.
5. In a county in which the supreme court determines that less than one full-time employee is necessary to provide clerk of district court services, the supreme court may provide funding for such services in accordance with an agreement under subsection 6.
6. The supreme court may enter into an agreement with one or more boards of county commissioners to provide funding for the provision of clerk of district court services in a manner consistent with standards and procedures established by the supreme court. Funding for personnel under the agreement must be equal to the amount, based on county employee compensation levels, necessary for the number of full-time employees needed to provide clerk of district court services. Funding must be available under the agreement to defray the cost of technology related equipment considered necessary by the supreme court for the delivery of adequate clerk of district court services. After entering into an agreement under this subsection, a county may, under chapter 11-10.2 or 11-10.3, provide for the delivery of clerk of district court services in a manner consistent with the agreement. If a county fails to fulfill the terms of an agreement or is unable to provide clerk of district court services consistent with standards and procedures established by the supreme court, the supreme court shall provide for those services in any manner it considers appropriate.
7. a. State funding for the provision of clerk of district court services may be provided beginning January 1, 2001. Before April 1, 2000, each board of county commissioners shall notify the supreme court of its

election to provide clerk of district court services under subsection 2, of its consent to the elected clerk of court and designated staff becoming state employees under subsection 3 or 4, or of its election to enter into an agreement under subsection 6. If a board of county commissioners elects to enter into an agreement under subsection 6, the agreement must be executed before July 1, 2000. If an agreement is not executed before that date, the county must provide clerk of district court services at its own expense under subsection 2.

- b. Before April 1, 2002, and thereafter before April 1 of each succeeding even-numbered year, each board of county commissioners that has executed an agreement under subsection 6 or whose county is providing clerk of district court services under subsection 2 must notify the supreme court of its election to continue the existing arrangement or initiate a different option. If a board of county commissioners elects to enter into an agreement under subsection 6, the agreement must be executed before July 1 of the year the election is made. If an agreement is not executed before that date, the county must provide clerk of district court services at its own expense under subsection 2.

27-05.2-03. (Effective January 1, 2001) Fees to be charged by the clerk of the district court.

1. A clerk of the district court shall charge and collect the following fees in civil cases:
- a. For filing a case for decision that is not a small claims action, eighty dollars.
- (1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed four hundred thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
- (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14 and fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
- (3) For all other filings, sixty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
- b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
- c. For filing a small claims action in district court, ten dollars.

- d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ten dollars.
 - e. For preparing, certifying, issuing, or transmitting any document, ten dollars; or a lesser fee as may be set by the state court administrator.
 - f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof.

27-05.2-04. (Effective January 1, 2001) Clerk to keep record of fees - Monthly report to county auditor or state treasurer. The clerk of the district court shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month, and also at the close of the clerk's term of office for a clerk who has not become a state employee under subsection 3 or 4 of section 27-05.2-02, the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which must be used for facilities, except fees that the clerk is directed to deposit with the state treasurer or is authorized expressly to retain. Within three days after the close of each calendar month, a clerk who has become a state employee under subsection 3 or 4 of section 27-05.2-02 shall file with the state treasurer a statement under oath showing the amount of fees received by the clerk since the date of the clerk's last report. Within three days thereafter, the clerk shall deposit with the state treasurer the total sum of fees required to be deposited in the general fund or in a designated special fund. The clerk shall forward to the county treasurer any fees received under section 27-05.2-03 which are not required to be deposited in the state general fund or a designated special fund. Those fees must be used for facilities. The clerk may establish a special account in the Bank of North Dakota or in a banking institution designated as a depository of public funds under chapter 21-04 for purposes of depositing any money not required to be deposited in the state general fund, a designated special fund, or the county treasury and which is received as bail or restitution, or otherwise received pursuant to an order of the court. The clerk shall make payments from the special account for purposes of refunding bail, forwarding restitution amounts to the entitled recipient, or otherwise making payments as directed by an order of the court. If money deposited as bail is forfeited, the clerk shall submit the appropriate sum to the state treasurer for deposit in the state general fund. If the clerk is unable to make payments from the special account because the address of the recipient is unknown or the recipient cannot otherwise be located, the clerk shall dispose of the deposited money in accordance with chapter 47-30.1

27-05.2-05. (Effective January 1, 2001) Decree or judgment of divorce, annulment, or paternity filed with registrar of vital statistics. The clerk of the district court in which any decree or judgment of divorce, annulment of marriage, or paternity has been entered shall within fifteen days of the filing thereof notify the state register of vital statistics of the entry of the decree or judgment of divorce, annulment of marriage, or paternity and shall furnish such information relating

thereto as the state registrar may require upon such forms as may be furnished by the state registrar.

27-05.2-06. Records maintenance and disposal. A clerk of district court shall maintain and dispose of court records in accordance with rules, policies, and procedures adopted by the supreme court.

27-05.2-07. (Effective January 1, 2001) Penalty for neglect of duty. If an elected clerk of the district court who has not become a state employee under subsection 3 or 4 of section 27-05.2-02 violates the clerk's oath of office or neglects or refuses to perform any of the duties of office and any person is injured or aggrieved by such violation or neglect, such person may institute legal proceedings upon the bond of the clerk and recover double the amount of damages actually sustained. For each such violation or neglect by the clerk, the county treasurer shall collect a forfeiture of not less than fifty dollars.

²⁰⁸ **SECTION 51. AMENDMENT.** Section 27-05.2-04 of the North Dakota Century Code as created in section 50 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

27-05.2-04. (Effective January 1, 2001-2003) Clerk to keep record of fees - Monthly report to county auditor or state treasurer. ~~The~~ A clerk of the district court providing clerk services in accordance with subsection 2 or 6 of section 27-05.2-02 shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month, ~~and also at the close of the clerk's term of office for a clerk who has not become a state employee under subsection 3 or 4 of section 27-05.2-02,~~ the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which must be used for facilities, except fees that the clerk is directed to deposit with the state treasurer or is authorized expressly to retain. Within three days after the close of each calendar month, a clerk who has become a state employee under subsection 3 or 4 of section 27-05.2-02 shall file with the state treasurer a statement under oath showing the amount of fees received by the clerk since the date of the clerk's last report. Within three days thereafter, the clerk shall deposit with the state treasurer the total sum of fees required to be deposited in the general fund or in a designated special fund. The clerk shall forward to the county treasurer any fees received under section 27-05.2-03 which are not required to be deposited in the state general fund or a designated special fund. Those fees must be used for facilities. The clerk may establish a special account in the Bank of North Dakota or in a banking institution designated as a depository of public funds under chapter 21-04 for purposes of depositing any money not required to be deposited in the state general fund, a designated special fund, or the county treasury and which is received as bail or restitution, or otherwise received pursuant to an order of the court. The clerk shall make payments from the special account for purposes of refunding bail, forwarding restitution amounts to the entitled recipient, or otherwise making payments as directed by an order of the court. If money deposited as bail is forfeited, the clerk shall submit the appropriate sum to the state treasurer for deposit in the state general fund. If the clerk is unable to make payments from the special account because the

²⁰⁸ Section 27-05.2-04 was created by section 50 of House Bill No. 1275, chapter 278.

address of the recipient is unknown or the recipient cannot otherwise be located, the clerk shall dispose of the deposited money in accordance with chapter 47-30.1.

²⁰⁹ **SECTION 52. AMENDMENT.** Section 27-05.2-07 of the North Dakota Century Code as created in section 50 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

27-05.2-07. (Effective January 1, 2001-2003) Penalty for neglect of duty. If an ~~elected~~ ex officio clerk of the district court ~~who has not become a state employee under subsection 3 or 4 of section 27-05.2-02~~ violates the clerk's oath of office or neglects or refuses to perform any of the duties of office and any person is injured or aggrieved by such violation or neglect, such person may institute legal proceedings upon the bond of the clerk and recover double the amount of damages actually sustained. For each such violation or neglect by the clerk, the county treasurer shall collect a forfeiture of not less than fifty dollars.

SECTION 53. AMENDMENT. Section 27-08.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-03. (Effective January 1, 2001) Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor. No formal pleadings other than the claim affidavit and order for appearance shall be required, and the hearing and disposition of actions shall be informal. No court reporter shall be required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed five thousand dollars, which must be served upon the plaintiff by a person of legal age not a party to or interested in the action, or mailed to him by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule does not apply to counterclaims in excess of five thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims court. A fee as prescribed in subdivision c of subsection 1 of section ~~44-17-04~~ 27-05.2-03 must be charged for filing the claim affidavit.

²¹⁰ **SECTION 54. AMENDMENT.** Section 28-20.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-20.1-05. (Effective January 1, 2001) Fees. Any person filing a foreign judgment shall pay to the clerk of court a filing fee as prescribed in subdivision d of

²⁰⁹ Section 27-05.2-07 was created by section 50 of House Bill No. 1275, chapter 278.

²¹⁰ Section 28-20.1-05 was also amended by section 4 of House Bill No. 1042, chapter 107.

subsection 1 of section ~~44-17-04~~ 27-05.2-03. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court of any county of this state.

SECTION 55. AMENDMENT. Section 30.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-11-01. (Effective January 1, 2001) (2-515) Deposit of will with court in testator's lifetime. A will may be deposited by the testator or the testator's agent with ~~any court~~ a register of deeds for safekeeping; ~~under rules of the court~~. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in a writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the ~~court~~ register of deeds shall notify any person designated to receive the will and deliver it to that person on request; or the ~~court~~ register of deeds may deliver the will to the appropriate court.

SECTION 56. AMENDMENT. Section 32-37-05 of the North Dakota Century Code is amended and reenacted as follows:

32-37-05. (Effective January 1, 2001) Fees paid by petitioner - Filing copy of judgment. The petitioner, upon the filing of the petition, must pay to the clerk of the district court a filing fee as prescribed in subsection 1 of section ~~44-17-04~~ 27-05.2-03. The cost of the publication of the notice required by this chapter shall be paid by the petitioner. In the event that said judgment shall establish the date and place of birth of the petitioner, the clerk of the court shall certify a copy of such judgment and file the same with the division of vital statistics, state department of health, Bismarck, North Dakota.

²¹¹ **SECTION 57. AMENDMENT.** Section 35-18-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-18-04. (Effective January 1, 2001) Clerk of court - Filing - Record - Fee. The clerk of the district court with whom the lien statement and proof of service are filed shall endorse on those filings the date and hour of filing and shall keep a record of all lien statements filed in the county, and of any orders, or responses relating to any orders, by the district court. The clerk shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. The clerk shall collect a fee as prescribed in subdivision d of subsection 1 of section ~~44-17-04~~ 27-05.2-03 for filing and indexing each lien.

²¹² **SECTION 58. AMENDMENT.** Section 35-21-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

²¹¹ Section 35-18-04 was also amended by section 7 of House Bill No. 1042, chapter 107.

²¹² Section 35-21-05 was also amended by section 8 of House Bill No. 1042, chapter 107, and section 4 of Senate Bill No. 2229, chapter 315.

35-21-05. (Effective January 1, 2001) Fee - Recordation - Certified copies as evidence. If the presiding officer is the clerk of the district court, the clerk may charge a fee as prescribed in subdivision d of subsection 1 of section ~~44-17-04~~ 27-05.2-03 to be paid in advance by the applicant. If the officer is the clerk of the district court, the clerk shall record the notice, affidavit, and undertaking in a recording system provided for that purpose. If the officer is the register of deeds, the officer shall record the same in the book of miscellaneous records. The register of deeds may charge a fee as provided by section 11-18-05. Certified copies of the documents are prima facie evidence, in the courts of this state, of the matters therein contained.

SECTION 59. AMENDMENT. Section 37-01-34 of the North Dakota Century Code is amended and reenacted as follows:

37-01-34. (Effective January 1, 2001) Recordation of discharge papers. ~~It is hereby provided that those~~ Those discharged from the national guard, the army, the marine corps, and other branches of the armed forces of the United States may record, without payment of any fee, their discharges from such armed forces, a certificate issued in lieu thereof, duly authenticated and certified copies thereof, or duly certified records of their service and discharge from such armed forces in the office of the ~~clerk register of the district court deeds~~ register of the county deeds of the county in which they reside; ~~without payment of any fee whatsoever, and such recordings have the same force and effect as the recording of other instruments; provided, however, that any,~~ unless the board of county commissioners designates a different official. Any discharge document recorded by the ~~clerk register of district court deeds, or designated official,~~ designated official, may be made available only to the following persons: the veteran, the parents, ~~his~~ the veteran's next of kin, the veteran's legal representative, a county veterans' service officer, a veterans' organization service officer, the department of veterans' affairs, or a designee of the veteran.

SECTION 60. AMENDMENT. Section 37-01-35 of the North Dakota Century Code is amended and reenacted as follows:

37-01-35. (Effective January 1, 2001) Legalizing previous recordings. Where ~~clerks a register of court have deeds, or designated official,~~ has recorded discharge papers without charging the recording fees provided by law, said the recording is hereby declared legalized. In no such case may ~~clerks the register of court deeds, or designated official,~~ be held responsible to his respective county in cases where filing fees have not been collected.

SECTION 61. AMENDMENT. Subsection 4 of section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the office of the state toxicologist or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the office of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the office of the state toxicologist, ~~or the clerk register of district court,~~ are regularly kept records of the director ~~deeds,~~ deeds, unless the board of county

commissioners has designated a different official to maintain the certificate.

²¹³ **SECTION 62. AMENDMENT.** Subsection 4 of section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the state toxicologist or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the state toxicologist, or the ~~clerk register of district court,~~ are regularly kept records of the director deeds, unless the board of county commissioners has designated a different official to maintain the certificate.

²¹⁴ **SECTION 63. AMENDMENT.** Subsections 6 and 7 of section 39-20-07 of the North Dakota Century Code are amended and reenacted as follows:

6. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the ~~clerk register of the district court~~ deeds in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental

²¹³ Section 39-20-05 was also amended by section 7 of House Bill No. 1182, chapter 340.

²¹⁴ Section 39-20-07 was also amended by section 8 of Senate Bill No. 2345, chapter 358.

material has the same force and effect as the material that it supplements.

7. Copies of the records referred to in subsections 5 and 6, certified by the clerk register of the district court deeds, or designated official, must be admitted as prima facie evidence of the matters stated in the records.

²¹⁵ **SECTION 64. AMENDMENT.** Subsections 4 and 5 of section 39-24.1-08 of the North Dakota Century Code are amended and reenacted as follows:

4. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the clerk register of the district court deeds in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this subsection may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

5. Copies of the records referred to in subsections 3 and 4, certified by the clerk register of the district court deeds, or designated official, must be admitted as prima facie evidence of the matters stated in the records.

²¹⁶ **SECTION 65. AMENDMENT.** Subsection 1 of section 40-01.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. With respect to a county:

²¹⁵ Section 39-24.1-08 was also amended by section 11 of Senate Bill No. 2345, chapter 358.

²¹⁶ Section 40-01.1-04 was also amended by section 9 of House Bill No. 1035, chapter 164, and section 4 of Senate Bill No. 2045, chapter 242.

- a. Execution of a joint powers agreement between the county and one or more other political subdivisions or the state for the cooperative or joint administration of any service or function pursuant to chapter 54-40.3 or as otherwise specifically provided by law, or an agreement between the county and a tribal government pursuant to chapter 54-40.2.
- b. Exercise of the county's general authority to contract pursuant to section 11-10-01 and any other law, including service agreements with public or private parties under the terms and conditions of the agreements.
- c. Combination or separation of any elective or appointive county office and corresponding functions, or redesignation of any county office as elective or appointive, pursuant to chapter 11-10.2.
- d. Change in the number of county commissioners pursuant to chapter 11-12.
- e. Establishment of a county home rule charter commission for initiating the adoption of a home rule charter or the amendment or repeal of a home rule charter pursuant to chapter 11-09.1, or the adoption, amendment, or repeal of ordinances for implementing a home rule charter. The recommendation may include a specific nonbinding proposal or draft for a home rule charter or amendment to a home rule charter.
- f. Adoption of the consolidated office form of county government pursuant to chapter 11-08.
- g. Adoption of the county manager form of county government pursuant to chapter 11-09.
- h. Use of other statutory tools relating to social and economic development, land use, transportation and roads, health, law enforcement, administrative and fiscal services, recording and registration services, educational services, environmental quality, water, sewer, solid waste, flood relief, parks and open spaces, hospitals, public buildings, or other county functions or services, including creation of cooperative county job development authorities pursuant to section 11-11.1-03, multicounty health units pursuant to sections 23-14-01.1 through 23-14-01.6, regional planning and zoning commissions pursuant to section 11-35-01, boards of joint county park districts pursuant to chapter 11-28 or a combination of boards of park commissioners with a city pursuant to chapter 40-49.1, or multicounty social service districts pursuant to chapter 50-01.1.
- i. Participation in a community or leadership development, assessment, education, planning, or training program offered by any public or private agency, institution, or organization.
- j. ~~Exercise of county options with respect to register of deed services and clerk of district court services pursuant to sections 11-10-02 and 11-17-11.~~

- ✎ Sharing of elective or appointive county officers with other counties, cities, or other political subdivisions pursuant to chapter 11-10.3.
- ✎ k. Initiation of the multicounty home rule charter process or the amendment or repeal of a multicounty home rule charter pursuant to section 11-09.1-04.1, or the adoption, amendment, or repeal of ordinances to implement the charter. The recommendation may include a specific nonbinding proposal or draft for a multicounty home rule charter.
- ✎ l. Initiation of the county-city home rule process or the amendment or repeal of a county-city home rule charter pursuant to chapter 54-40.4, or the adoption, amendment, or repeal of ordinances to implement the charter. The recommendation may include a specific nonbinding proposal or draft for a county-city home rule charter.
- ✎ m. Transfer of a power or function of another political subdivision to the county pursuant to chapter 54-40.5.
- ✎ n. Creation of a county consolidation committee pursuant to chapter 11-05.1.
- ✎ o. That any other action be taken that is permitted by law.
- ✎ p. That no action be taken.

²¹⁷ **SECTION 66. AMENDMENT.** Section 40-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-05. (Effective January 1, 2001) Ratification by majority vote - Supersession of existing charter and state laws in conflict therewith - Filing of copies of new charter. If a majority of the qualified voters voting on the charter at the election shall vote in favor of the home rule charter it shall be deemed to be ratified and shall become the organic law of such city, and extend to all its local and city matters. Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict therewith, and shall be liberally construed for such purposes. One copy of the charter so ratified and approved shall be filed with the secretary of state;¹ one with the ~~clerk~~ register of district court deeds for the county in which the city is located, unless the board of county commissioners designates a different official; and one with the auditor of the city to remain as a part of its permanent records. Thereupon the courts shall take judicial notice of the new charter.

SECTION 67. AMENDMENT. Subsection 1 of section 40-33.1-14 of the North Dakota Century Code is amended and reenacted as follows:

1. In the event that an authority shall default in the payment of principal of or interest on any issue of the notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that an authority

²¹⁷ Section 40-05.1-05 was also amended by section 1 of Senate Bill No. 2198, chapter 363.

shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of any issue of the notes, the holders of twenty-five percent in aggregate principal amount of the notes of such issue then outstanding, by instrument or instruments filed in the office of the ~~clerk register of the district court~~ deeds of the county in which the authority is located, unless the board of county commissioners designates a different official, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes for the purposes herein provided.

SECTION 68. AMENDMENT. Subsection 1 of section 40-61-16 of the North Dakota Century Code is amended and reenacted as follows:

1. In the event that an authority shall default in the payment of principal of or interest on any issue of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that an authority shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of any issue of the bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the ~~clerk register of the district court~~ deeds of the county in which the authority is located, unless the board of county commissioners designates a different official, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

²¹⁸ **SECTION 69. AMENDMENT.** Section 43-01-19 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-01-19. (Effective January 1, 2001) County officers may certify abstracts.

The provisions of this chapter do not prevent the register of deeds, county treasurer, or clerk of court from certifying to abstracts of title to lands from the records of their respective offices. Each such officer, however, is liable on his official bond for the faithful performance of all acts performed by him as such abstracter. If the officer certifying the abstract is the clerk of court, the clerk shall charge and collect a fee as prescribed in subdivision e of subsection 1 of section ~~44-17-04~~ 27-05.2-03.

SECTION 70. AMENDMENT. Section 43-23-16 of the North Dakota Century Code is amended and reenacted as follows:

43-23-16. (Effective January 1, 2001) Licensee list. The secretary-treasurer shall publish, at least annually, a list of the names and addresses of all licensees licensed by the board under the provisions of this chapter, together with such other information relative to the enforcement of the provisions of this chapter as the board may deem of interest to the public. One of such lists must be mailed to the ~~clerk register of courts~~ deeds in each county ~~of the state~~, unless the board of county commissioners designates a different official, and must be held ~~by said clerk of court~~

²¹⁸ Section 43-01-19 was also amended by section 9 of House Bill No. 1042, chapter 107.

as a public record. Such lists must also be mailed by the secretary-treasurer to any person in this state upon request, and to all licensed brokers without charge.

SECTION 71. AMENDMENT. Section 43-25-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-09. (Effective January 1, 2001) License - Display - Renewal - Renewal fee. Each license must be conspicuously displayed at the place of practice and must be recorded within thirty days after issuance in the office of the ~~clerk~~ register of the district court deeds in any county where the licensed massage therapist practices within thirty days after issuance, unless the board of county commissioners designates a different official. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the license. If the board reasonably believes a massage therapist is in a physical condition jeopardizing the health of those who seek relief from the massage therapist, the board may require the applicant to have a physical examination by a competent medical examiner. If the applicant has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the applicant furnishes due proof of being physically and mentally competent and sound. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee and production of a new certificate of physical examination. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 72. AMENDMENT. Section 43-49-09 of the North Dakota Century Code is amended and reenacted as follows:

43-49-09. (Effective January 1, 2001) License - Display - Renewal - Renewal fee. Each license must be conspicuously displayed at the place of practice. A license must be recorded within thirty days after issuance in the office of the ~~clerk~~ register of the district court deeds, unless the board of county commissioners designates a different official, in any county where the reflexologist practices within thirty days after issuance.

A license must be renewed before June first of each year. The secretary-treasurer of the board shall mail notice of renewal to each licensed reflexologist's address as shown in the records of the board at least thirty days before the expiration of the license. The notice must include any requests for information necessary for renewal. The licensed reflexologist may renew a license by sending a renewal fee of twenty-five dollars, or an amount set by the board, to the secretary-treasurer of the board, and submitting proof that the reflexologist has attended a seminar on reflexology at least once during the preceding three years. A license that is not renewed by June thirtieth lapses.

SECTION 73. AMENDMENT. Section 44-11-01 of the North Dakota Century Code is amended and reenacted as follows:

44-11-01. (Effective January 1, 2001) What officers removable by governor - Grounds. The governor may remove from office any county commissioner, clerk of the district court who is not an employee of the state judicial system, sheriff, coroner, county auditor, register of deeds, state's attorney, county treasurer, superintendent of schools, county commissioner, surveyor, public administrator, city auditor, city

commissioner, mayor, chief of police, deputy sheriff, or other police officer, township officer, rural fire protection district board member, school board member, or any custodian of public moneys, except the state treasurer, whenever it appears to the governor by competent evidence and after a hearing as provided in this chapter, that the officer has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

SECTION 74. AMENDMENT. Section 44-11-01 of the North Dakota Century Code as amended in section 73 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

44-11-01. (Effective January 1, 2001 2003) What officers removable by governor - Grounds. The governor may remove from office any county commissioner, ~~clerk of the district court who is not an employee of the state judicial system,~~ sheriff, coroner, county auditor, register of deeds, state's attorney, county treasurer, superintendent of schools, county commissioner, surveyor, public administrator, city auditor, city commissioner, mayor, chief of police, deputy sheriff, or other police officer, township officer, rural fire protection district board member, school board member, or any custodian of public moneys, except the state treasurer, whenever it appears to the governor by competent evidence and after a hearing as provided in this chapter, that the officer has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

SECTION 75. AMENDMENT. Section 46-04-05 of the North Dakota Century Code is amended and reenacted as follows:

46-04-05. (Effective January 1, 2003) Distribution of session laws, compilations, and codifications to county officers. The board of county commissioners of each county, immediately after the publication of any session laws, codes, or compilations, shall cause a copy thereof to be furnished to the following county officers:

1. Auditor.
2. State's attorney.
3. ~~Clerk~~ Ex officio clerk of court, unless the clerk of court is an employee of the state judicial system.
4. Sheriff.

If any of the offices legally have been combined in the county, only one copy of the session laws, codes, or compilations need be furnished for the offices so combined. Provided, however, that such codifications and copies of the session laws remain the permanent property of the county.

SECTION 76. AMENDMENT. Section 47-18-08 of the North Dakota Century Code is amended and reenacted as follows:

47-18-08. (Effective January 1, 2001) Petition for appraisal - When filed. A petition for the appointment of appraisers of a homestead must be filed with the clerk register of the district court deeds, unless the board of county commissioners designates a different official, and a copy thereof, with notice of the time and place of hearing, served on the claimant at least ten days before the hearing.

SECTION 77. AMENDMENT. Section 51-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-06. (Effective January 1, 2001) License list. The public service commission shall compile annually, by April first, a list of the names and addresses of those licensed under this chapter. The list must be mailed to the clerk register of the district court deeds, unless the board of county commissioners designates a different official, in each county and must be held ~~by the clerk of court~~ as a public record. The commission shall mail the list to any person requesting it.

SECTION 78. AMENDMENT. Subsection 4 of section 54-40.4-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. One copy of the charter as ratified must be filed with the secretary of state, one with the clerk register of district court deeds, unless the board of county commissioners designates a different official, for any affected county or city, and one with the officer of unified county-city government responsible for maintaining permanent records. Courts shall take judicial notice of the charter.

SECTION 79. AMENDMENT. Section 57-22-16 of the North Dakota Century Code is amended and reenacted as follows:

57-22-16. (Effective January 1, 2001) Procedure when personal property is about to be sold or removed without payment of tax. If a township, city, or county officer learns or believes that there is danger that personal property which has been assessed and upon which any personal property taxes are due or will be due, will be sold, or removed from the county, without payment of the taxes and without leaving sufficient property to pay the whole of such taxes, he shall report such fact to the sheriff, who forthwith shall collect the taxes, or distrain and sell sufficient property to pay the same, if they are not paid on demand, or require an undertaking from the owner in favor of the county treasurer, conditioned that all taxes levied upon such property will be paid when due. Such undertaking must be approved by the clerk register of the district court deeds, unless the board of county commissioners designates a different official. If the taxes involved have not been levied, they must be ascertained by the county auditor by applying the aggregate mill levy of the previous year for the taxing district in which the property is assessed to the current taxable valuation, and if, after the tax for the current year is levied, there is any excess, it must be refunded to the taxpayer on order of the board of county commissioners. In case a bond has been given, and the taxes are not paid when due, the county treasurer shall bring an action for the taxes and costs in the district court of the county, and the state's attorney shall represent the treasurer in such action on the bond.

²¹⁹ **SECTION 80. AMENDMENT.** Section 57-22-32 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-22-32. (Effective January 1, 2001) Collection from tax debtor who moves to another county - Duty of county auditor. Upon the removal of a delinquent tax

²¹⁹ Section 57-22-32 was also amended by section 10 of House Bill No. 1042, chapter 107.

debtor from the county, collection must be made from the debtor in the manner following:

1. In case of the removal of any delinquent tax debtor from the county in which the debtor's personal property was taxed to any other county in this state, it is the duty of the assessor immediately to make a proper effort to ascertain the place of the debtor's destination and to report the same to the county auditor. Thereupon, the county auditor shall make out and forward to the ~~clerk~~ register of the district court deeds of the county to which the tax debtor has removed, unless the board of county commissioners designates a different official of that county, a statement of the amount of such delinquent taxes, including penalties and costs that may have attached, specifying the value of property on which said taxes were levied.
2. On receipt of any such statement, the ~~clerk~~ register of the district court deeds, or designated official, receiving the same shall issue a warrant to the sheriff of the county, and such sheriff shall proceed immediately to collect the same in the manner in which the sheriff collects delinquent taxes in the county. The sheriff shall collect from the tax debtor an additional sum ~~as prescribed in subdivision e of subsection 4 of section 11-17-04 for each warrant of ten dollars~~. Such sum must be paid to ~~such clerk~~ the register of deeds, or designated official, as the fee for issuing said warrant, and all taxes thus collected must be remitted by the sheriff to the treasurer of the county to which the taxes belong, together with the original statement of account, and if any taxes remain unpaid a statement must be made of the reason therefor, and proper entries must be made on the tax lists of the county where the tax was levied.

SECTION 81. REPEAL. Sections 11-17-02, 11-17-03, 11-17-08, 11-17-09, 11-17-10, and 11-17-11 of the North Dakota Century Code are repealed.

SECTION 82. REPEAL. Sections 11-17-01, 11-17-05, and 11-17-06 of the North Dakota Century Code and sections 11-17-04 and 11-17-07 of the 1997 Supplement to the North Dakota Century Code are repealed.

SECTION 83. EFFECTIVE DATE. Sections 35, 36, 37, 38, 39, 44, 45, 46, 47, 48, 61, 62, 63, 64, 67, 68, 78, and 82 of this Act become effective January 1, 2001.

Approved April 2, 1999
Filed April 2, 1999

CHAPTER 279**SENATE BILL NO. 2078**

(Judiciary Committee)

(At the request of the Supreme Court)

JUROR SELECTION AFTER NATURAL DISASTER

AN ACT to amend and reenact section 27-09.1-05.1 of the North Dakota Century Code, relating to selection of jurors from a judicial district in the event of a natural disaster.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁰ **SECTION 1. AMENDMENT.** Section 27-09.1-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-05.1. Selection of jurors from judicial district - Impact of natural disaster - Grounds and method for selection. The court, upon its own motion, may direct that prospective jurors be selected from one or more counties in the judicial district in which the court is located if the county of venue has a population of not more than ten thousand persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury. Following notification by the court, the clerk of court of any county in the judicial district shall submit a specified number of names, with mailing addresses, of the prospective, qualified jurors to the clerk of court of the county of venue. If a natural disaster impairs the selection of a sufficient number of prospective jurors in any county, the supreme court, by emergency order, may authorize the court in the affected county to obtain additional names and mailing addresses of prospective, qualified jurors from the clerk of court of an adjoining county in the judicial district or from the clerk of court of another county in the judicial district if a sufficient number of names and addresses is not available from the adjoining county.

Approved March 3, 1999
Filed March 4, 1999

²²⁰ Section 27-09.1-05.1 was also amended by section 1 of House Bill No. 1234, chapter 280.

CHAPTER 280

HOUSE BILL NO. 1234 (Representative Klemin)

JUROR SELECTION

AN ACT to amend and reenact section 27-09.1-05.1 of the North Dakota Century Code, relating to selection of jurors from a judicial district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²¹ **SECTION 1. AMENDMENT.** Section 27-09.1-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-05.1. Selection of jurors from judicial district - Grounds and method for selection. The court, upon its own motion or in response to a motion by a party, may direct that prospective jurors be selected from one or more counties in the judicial district in which the court is located if the county of venue has a population of not more than ten thousand persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury. Following notification by the court, the clerk of court of any county in the judicial district shall submit a specified number of names, with mailing addresses, of the prospective, qualified jurors to the clerk of court of the county of venue.

Approved March 11, 1999
Filed March 11, 1999

²²¹ Section 27-09.1-05.1 was also amended by section 1 of Senate Bill No. 2078, chapter 279.

CHAPTER 281**SENATE BILL NO. 2080**

(Judiciary Committee)

(At the request of the Supreme Court)

SUPPORT ACTION CONTEMPT OF COURT

AN ACT to amend and reenact subdivision a of subsection 1 of section 27-10-01.3 of the North Dakota Century Code, relating to contempt of court in child or spousal support actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 27-10-01.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The court on its own motion or motion of a person aggrieved by contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, after notice and hearing, may impose a remedial sanction authorized by this chapter. In a proceeding to impose a remedial sanction for failure to pay child or spousal support, an order to pay support is prima facie evidence the obligor has the ability to pay, and the burden of persuasion is upon the obligor to prove inability to pay the support ordered.

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 282

SENATE BILL NO. 2171

(Human Services Committee)

(At the request of the Department of Human Services)

ADOPTION AND SAFE FAMILIES ACT IMPLEMENTATION

AN ACT to create and enact three new sections to chapter 27-20, two new subsections to section 50-09-01, five new subsections to section 50-09-02, two new subsections to 50-09-03, a new section to chapter 50-09, two new sections to chapter 50-11, two new chapters to title 50, and a new section to chapter 50-12 of the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of 1997 and the interstate compact on adoption and medical assistance; to amend and reenact subsection 4 of section 14-15-11, subsection 2 of section 14-15.1-04, sections 27-20-02, 27-20-03, 27-20-30, 27-20-36, 27-20-38, 27-20-44, 27-20-45, 27-20-46, 27-20-47, 27-21-02.1, and 50-11-06.8 of the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of 1997; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²² **SECTION 1. AMENDMENT.** Subsection 4 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

4. The report of the investigation must contain an evaluation of the placement, including a criminal history record investigation of the petitioner, with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor.

SECTION 2. AMENDMENT. Subsection 2 of section 14-15.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. An assessment of how the identified adoptive parent's emotional maturity, finances, health, relationships, criminal history record, and any other relevant factors may affect the identified adoptive parent's ability to accept, care for, and provide the child with an adequate environment in which to mature.

SECTION 3. AMENDMENT. Section 27-20-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-02. Definitions. As used in this chapter:

1. "Abandon" means:

²²² Section 14-15-11 was also amended by section 1 of Senate Bill No. 2388, chapter 148.

- a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
 - (1) To communicate with the child; or
 - (2) To provide for the care and support of the child as required by law; or
- b. As to a parent of a child in that parent's custody:
 - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
 - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
 - (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Aggravated circumstances" means circumstances in which a parent:
 - a. Abandons, tortures, chronically abuses, or sexually abuses a child;
 - b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of:
 - (1) One year; or
 - (2) One-half of the child's lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed;
 - c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;
 - d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
 - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03; or
 - (3) A violation of section 12.1-17-02 in which the victim has suffered serious bodily injury;
 - e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim; or

- f. Has been incarcerated under a sentence for which the latest release date is:
- (1) In the case of a child age nine or older, after the child's majority; or
 - (2) In the case of a child, after the child is twice the child's current age, measured in days.
4. "Child" means an individual who is:
- a. Under the age of eighteen years and is neither married and cohabiting with spouse nor in the military service of the United States; or
 - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.
- ~~2.~~ 5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.
- ~~3.~~ 6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection ~~4~~ 16 and is not a traffic offense as defined in subsection ~~9~~ 15.
- ~~4.~~ 7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.
- ~~5.~~ 8. "Deprived child" means a child who:
- a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian;
 - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent; or
 - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court.

9. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under section 23 of this Act, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.
10. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
- ~~6.~~ 11. "Juvenile court" means the district court of this state.
12. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
- a. Whether and, if applicable, when the child will be returned to the parent;
 - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
 - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
 - d. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;
 - e. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether the out-of-state placement continues to be appropriate and in the child's best interests; and
 - f. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.
- ~~7.~~ 13. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.
14. "Relative" means:
- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
 - b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;

- c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
 - d. The child's stepparent.
8. 15. "Shelter care" means temporary care of a child in physically unrestricted facilities.
9. 16. "Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; and driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.
40. 17. "Unruly child" means a child who:
- a. Is habitually and without justification truant from school;
 - b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
 - c. Has committed an offense applicable only to a child;
 - d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; or
 - e. Has committed an offense in violation of section 39-08-18 or 5-01-08; and
 - f. In any of the foregoing instances is in need of treatment or rehabilitation.
18. "Willfully" has the meaning provided in section 12.1-02-02.

SECTION 4. AMENDMENT. Section 27-20-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-03. Jurisdiction.

1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
 - a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
 - b. Proceedings for the termination of parental rights except when a part of an adoption proceeding; and
 - c. Proceedings arising under sections 27-20-39 through 27-20-42.

2. The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this chapter:
 - a. Proceedings to obtain judicial consent to the marriage, employment, or enlistment in the armed services of a child, if consent is required by law;
 - b. Proceedings under the interstate compact on juveniles;
 - c. Proceedings under the interstate compact on the placement of children; and
 - d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.
3. The juvenile court has concurrent jurisdiction with the district court of proceedings for the appointment of a guardian for a minor which, if originated under this chapter, are governed by this chapter and chapter 30.1-27.

SECTION 5. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Reasonable efforts to prevent removal or to reunify - When required.

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal and to reunite the child and the child's family. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve and reunify families:
 - a. Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and
 - b. To make it possible for a child to return safely to the child's home.
3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

4. Reasonable efforts of the type described in subsection 2 are not required if:
 - a. A court of competent jurisdiction has determined that a parent has subjected the child to aggravated circumstances; or
 - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620, et seq., and 42 U.S.C. 6701, et seq.], as amended, and federal regulations adopted thereunder, provided that this subsection may not provide a basis for overturning an otherwise valid court order.

SECTION 6. AMENDMENT. Section 27-20-30 of the North Dakota Century Code is amended and reenacted as follows:

27-20-30. Disposition of deprived child.

1. If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
 - a. Permit the child to remain with ~~his~~ the child's parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.
 - b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:
 - (1) Any individual who, after study by the juvenile supervisor or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.
 - (2) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
 - (3) The director of the county social service board or other public agency authorized by law to receive and provide care for the child.
 - (4) An individual in another state with or without supervision by an appropriate officer under section 27-20-40.
 - c. Without making any of the ~~foregoing~~ orders otherwise provided in this section transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section

- 27-20-39 if the child is or is about to become a resident of that state.
- d. Require the parents, guardian, or other custodian to participate in ~~the treatment ordered for the child.~~
 - e. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian.
 - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish, by order, some other planned permanent living arrangement.
2. Unless a child found to be deprived is found also to be delinquent, ~~he~~ the child may not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

SECTION 7. AMENDMENT. Section 27-20-36 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-36. Limitations of time on orders of disposition.

1. An order terminating parental rights or establishing a legal guardianship is without limit as to duration.
2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than two years, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.
 - a. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
 - a- (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - b- (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - e- (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
 - b. A permanency hearing must be conducted within thirty days after a court determines that reasonable efforts of the type described in subsection 2 of section 5 of this Act are not required, or twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:
 - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or

- (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services.
3. ~~An~~ Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue in force for more than ~~eighteen~~ twelve months after the child is considered to have entered foster care. Before the extension of any court order limited under this subsection, a permanency hearing must be conducted. Any other order of disposition may not continue in force for more than two years.
4. Except as provided in subsection 1, the court may terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
- a. A hearing is held before the expiration of the order upon motion of a party or on the court's own motion;
 - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;
 - c. The court finds the extension is necessary to accomplish the purposes of the order extended; and
 - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order. However, the court may order that the child permanently remain in foster care with a specified caregiver and that the duration of the order be left to the determination of the court if the court determines that:
 - (1) All reasonable efforts have been made to reunite the child with the child's family;
 - (2) The deprivation is likely to continue;
 - (3) With respect to a child under the age of ten, termination of parental rights and subsequent adoption would not be in the best interests of the child; and
 - (4) The placement of the child in permanent foster care is in the best interests of the child.
5. Except as provided in subsection 2, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.
6. Except as provided in subsection 1, when the child attains the age of twenty years, all orders affecting the child then in force terminate and the child is discharged from further obligation or control.

7. If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is ~~removed from the care, custody, and control of the child's parent, guardian, or other custodian~~ placed in foster care without terminating parental rights and the parent and child relationship, the court, before extending the duration of the order, shall determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under section 27-20-44 and is in the best interest of the child. In that case the notice of the extension hearing must also inform the parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing the child with a view to adoption. If the court determines that the child is adoptable and that termination of parental rights and the parent and child relationship is warranted and is in the best interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section 27-20-47.

SECTION 8. AMENDMENT. Section 27-20-38 of the North Dakota Century Code is amended and reenacted as follows:

27-20-38. Rights and duties of legal custodian. A custodian to whom legal custody has been given by the court under this chapter has the right to the physical custody of the child and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose. The custodian also has the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.

SECTION 9. AMENDMENT. Section 27-20-44 of the North Dakota Century Code is amended and reenacted as follows:

27-20-44. Termination of parental rights.

1. The court by order may terminate the parental rights of a parent with respect to ~~his~~ the parent's child if:
 - a. The parent has abandoned the child;
 - b. The child is a deprived child and the court finds ~~that the~~:
 - (1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; ~~or~~
 - (2) The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile

services, for at least four hundred fifty out of the previous six hundred sixty nights; or

(3) A court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

(a) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is another child of the parent;

(b) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-06-03 in which the victim is a child of the parent; or

(c) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury; or

c. The written consent of the parent acknowledged before the court has been given.

2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.

SECTION 10. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Petition to terminate parental rights - When brought - Definitions.

1. A petition to terminate parental rights may be made as provided under this section and section 27-20-45.

2. Except as provided in subsection 3, a petition for termination of parental rights must be filed:

a. If the child has been in foster care, in the custody of the department, or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;

b. Within sixty days after a court of competent jurisdiction has found the child to be an abandoned infant; or

c. Within sixty days after a court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

(1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is another child of the parent;

- a. The court enters an order:
 - (1) Denying a petition to grant care, custody, and control of the child to the department or the division of juvenile services;
 - (2) Terminating an order that granted custody of the child to the department or the division of juvenile services; or
 - (3) Appointing a legal guardian under section 14 of this Act;
 - b. The court order under which the child entered foster care ends by operation of law;
 - c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or
 - d. The child is placed in a parental home by the division of juvenile services.
6. For purposes of subsection 2, a child is not in foster care on any night during which the child is:
- a. On a trial home visit;
 - b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or
 - c. Absent without leave from the place in which the child was receiving foster care.
7. For purposes of this section:
- a. "A finding that the child has been subjected to child abuse or neglect" means:
 - (1) A finding of deprivation made under chapter 27-20; or
 - (2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
 - b. "Compelling reason" means a recorded statement that reflects consideration of:
 - (1) The child's age;
 - (2) The portion of the child's life spent living in the household of a parent of the child;
 - (3) The availability of an adoptive home suitable to the child's needs;
 - (4) Whether the child has special needs; and

(5) The expressed wishes of a child age ten or older.

c. "Department" means the department of human services or its designee, including any county social service board.

SECTION 11. AMENDMENT. Section 27-20-45 of the North Dakota Century Code is amended and reenacted as follows:

27-20-45. Proceeding for termination of parental rights.

1. The petition must comply with section 27-20-21 and state clearly that an order for termination of parental rights is requested and that the effect thereof will be as stated in the first sentence of section 27-20-46.
2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry must include, to the extent necessary and appropriate, all of the following:
 - a. Whether any man is presumed to be the father of the child under the Uniform Parentage Act.
 - b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
 - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.
 - d. Whether any person has formally or informally acknowledged or declared ~~his~~ that person's possible parentage of the child.
 - e. Whether any person claims any right to custody of the child.
3. The court shall add as respondent to the petition and cause to be served with a summons any person identified by the court as an unnamed parent, unless the person has relinquished parental rights, or parental rights have been previously terminated by a court.
4. If the court, after inquiry, is unable to identify an unnamed parent and no person has appeared in the proceeding claiming to be an unnamed parent of the child or to have any right of custody of the child, the court shall enter an order terminating all parental rights of the unnamed parent with reference to the child and the parent and child relationship.
5. If a petition for termination of parental rights is made by a parent of the child under this section or if a parent consents to termination of parental rights under section 27-20-44, that parent is entitled under section 27-20-26 to legal counsel during all stages of a proceeding to terminate the parent and child relationship ~~if the child is to be placed for adoption by a child-placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at the parent's own expense, or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's~~

attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons. Prior to the termination proceeding held under this chapter, the court or a person designated by the court shall inform the parent of the right to counsel provided by this subsection.

6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, including the petitioner, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless the person retained custody of the child.

SECTION 12. AMENDMENT. Section 27-20-46 of the North Dakota Century Code is amended and reenacted as follows:

27-20-46. Effect of order terminating parental rights or appointing a legal guardian.

1. An order terminating parental rights of a parent terminates all ~~his~~ the parent's rights and obligations with respect to the child and of the child to or through ~~him~~ the parent arising from the parental relationship. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another nor has ~~he~~ the parent any right to object to the adoption or otherwise to participate in the proceedings.
2. An order appointing a legal guardian terminates any authority of a parent that is granted to the legal guardian under that order. A parent subject to such an order is entitled to treatment as a party at any subsequent juvenile court proceeding regarding the child.

SECTION 13. AMENDMENT. Section 27-20-47 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-47. ~~Commitment to agency~~ Disposition upon termination of parental rights.

1. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall ~~commit~~:
 - a. Commit the child to the custody of the executive director of the department of human services or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence thereof, in a foster home or take other suitable measures for the care and welfare of the child;
 - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
 - c. Establish some other planned permanent living arrangement.

2. The custodian has the rights of a legal custodian and authority to consent to the child's adoption of the child, his marriage, his enlistment in the armed forces of the United States, and surgical and other medical treatment for the child.
- 2- 3. If the child is not ~~adopted~~ placed for adoption within ~~eighteen~~ twelve months after the date of the order and a ~~guardian or conservator of legal guardianship~~ or other planned permanent living arrangement for the child has not been ~~appointed by the district~~ established by a court of competent jurisdiction, the child must be returned to the court for entry of further orders for the care, custody, and control of the child.

SECTION 14. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Appointment of legal guardian.

1. In a proceeding under chapter 30.1-27, the court may:
 - a. Without terminating parental rights, appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the court has determined that a lawful basis exists for terminating parental rights, but the child is unlikely to be placed for adoption; or
 - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the child has not been placed for adoption within twelve months after a termination of all parental rights.
2. An individual appointed as a legal guardian has:
 - a. If there is a parent with remaining parental rights, the rights of a legal custodian; and
 - b. If there is no parent with remaining parental rights, the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.

SECTION 15. AMENDMENT. Section 27-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

27-21-02.1. Placement procedures. The division of juvenile services shall retain custody of the child as granted by the authority of the committing court and the Uniform Juvenile Court Act. The court in an order committing the child to the division may require court approval before a placement may be made to a more restrictive setting. All other placements may be made by the division at any time it appears to be in the child's best interest and in the best interest of the state.

1. A child, child's parent, or guardian who objects to a placement to a more restrictive setting made by the division may request a placement hearing to review the placement.
2. In an emergency, or for reasons of safety and security, the division may temporarily place a child in an appropriate facility. A child, child's

parent, or guardian who objects to the temporary placement may request a placement hearing to review the placement determined by the division.

3. The division may conduct a permanency hearing, as authorized by section 27-20-36, if an appropriate permanency plan may be carried out without exceeding the division's authority.

SECTION 16. Two new subsections to section 50-09-01 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

"Title IV-B" means title IV-B of the Social Security Act [Pub. L. 90-248, title II, sec. 240(c); 81 Stat. 911; 42 U.S.C. 620 et seq.], as amended;

"Title IV-E" means title IV-E of the Social Security Act [Pub. L. 96-272, title I, sec. 101(a)(1); 94 Stat. 501, 42 U.S.C. 670 et seq.], as amended.

SECTION 17. Five new subsections to section 50-09-02 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

For purposes of section 674(e)(2) of the Social Security Act [42 U.S.C. 674(e)(2)], approve families, outside of the jurisdiction of the state of North Dakota, for placement of children for adoption.

Act as the official agency of the state in the administration of child and family services in conformity with title IV-B and to direct and supervise county administration of that program.

Act as the official agency of the state in the administration of federal payments for foster care and adoption assistance in conformity with title IV-E and to direct and supervise county administration of that program.

Provide, upon request and insofar as staff resources permit, technical assistance concerning the requirements of title IV-B and title IV-E to courts within this state, including tribal courts, and to state's attorneys and tribal prosecutors within this state.

Make training available to state's attorneys and assistant state's attorneys who are willing to collaborate with colleagues in other counties on petitions to terminate parental rights.

SECTION 18. Two new subsections to section 50-09-03 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

Administer child and family services under the direction and supervision of the state agency in conformity with title IV-B.

Administer federal payments for foster care and adoption assistance under the direction and supervision of the state agency in conformity with title IV-E.

SECTION 19. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

State agency to submit plans and administer programs under title IV-B and title IV-E - Make application for federal funds.

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under title IV-B or title IV-E. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of title IV-B or title IV-E and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as may be authorized by federal law.
2. The state agency may apply for additional or conditionally available funds, such as adoption incentive payments, as may be made available under title IV-B or title IV-E, and may take any action reasonably necessary to support an application.

SECTION 20. AMENDMENT. Section 50-11-06.8 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-11-06.8. Criminal ~~background~~ history record investigation - Fingerprinting required.

1. Except as provided in ~~subsection 6~~ sections 21 and 22 of this Act, each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119, et seq.], as amended, federal law from:
 - a. Any individual employed by the facility; and
 - b. Any adult living in the facility, but not being provided care in the facility.
2. The facility shall assure that information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon

receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.

5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in subdivisions a and b of subsection 1 if the request is made for purposes of this section.
6. ~~This section does not apply to a family foster care home for children.~~
7. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.
8. 7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

SECTION 21. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation - Fingerprinting not required.

1. a. Except as provided in section 22 of this Act, each facility providing foster care shall secure from any individual employed by the facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.
 - b. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
 - (1) Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - (2) Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - (3) Is excused from providing fingerprints under rules adopted by the department.
2. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.
3. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60.

5. The department shall consult with the bureau of criminal investigation to determine the identifying information, other than fingerprints, appropriate to accomplish a statewide criminal history record investigation.
6. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

SECTION 22. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation - When not required. A criminal history record investigation may not be required, under section 50-11-06.8 or section 21 of this Act, of a family foster care home for children licensed or approved on the effective date of this section for so long as that home remains continuously licensed or approved.

SECTION 23. A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation required.

1. Before appointment as a legal guardian under chapter 27-20, the individual must be subject to an assessment that includes the result of a criminal history record investigation made under this section.
2. Except as provided in subsection 6, an individual described in subsection 1 shall secure, from a law enforcement agency or other agency authorized to take fingerprints, two sets of fingerprints, and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law. Upon a request made under this section, a law enforcement agency shall take fingerprints of any individual described in subsection 1, and may charge a reasonable fee to offset the cost of fingerprinting.
3. An individual described in subsection 1 shall assure that information obtained under subsection 2 is provided to the department of human services.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department of human services. The bureau of criminal investigation may charge a reasonable fee to offset the cost of providing any criminal history record information and may require payment of any charge imposed by the federal bureau of criminal investigation for a nationwide background check.

6. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
 - a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - c. Is excused from providing fingerprints under rules adopted by the department of human services.
7. The department of human services shall provide an individual, who provided the department with information under subsection 2, with any information received under this section from the bureau of criminal investigation which the department of human services is not prevented by federal law from disclosing to the individual.
8. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

Criminal history record investigation - Effect of results. An individual may not be licensed or approved as a foster parent or treated as having a home suitable for the adoption of any child other than the individual's stepchild, and a foster care facility that employs or houses an individual may not be licensed or approved, if the individual is the subject of a criminal history record investigation that reveals:

1. A felony conviction by a court of competent jurisdiction for criminal conduct involving:
 - a. Child abuse or neglect;
 - b. Domestic violence, as that term is used in chapter 14-07.1;
 - c. A crime in which a child was a victim, including the creation or distribution of child pornography; or
 - d. A crime involving violence, including rape, sexual assault, or murder, but not including other physical assault or battery;
2. A felony conviction entered within the past five years by a court of competent jurisdiction for criminal conduct involving:
 - a. A crime involving violence not described in subsection 1;
 - b. Any drug-related offense; or
 - c. An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct described in subsection 1;
3. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subsection 2 if five years have not elapsed after final discharge or release from any term of probation, parole, or other form of community corrections, without subsequent conviction, unless the individual demonstrates sufficient rehabilitation; or

4. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subsection 2 or a misdemeanor conviction by a court of competent jurisdiction for a crime in which a child was the victim or a crime of violence if the individual is not sufficiently rehabilitated.

SECTION 24. A new section to chapter 50-12 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation required.

1. A child-placing agency shall include, in any adoptive home study report, the results of a criminal history record investigation made under this section. If the results reveal a conviction of a crime described in section 23 of this Act, the home study report must include a determination that a home provided by the prospective adoptive parent is not a suitable home for the placement of any child and a recommendation that the petition for adoption be denied.
2. Except as provided in subsection 6, a child-placing agency shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints, and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any prospective adoptive parent. Upon a request of a child-placing agency, a law enforcement agency shall take fingerprints of any prospective adoptive parent for purposes of this section. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the cost of fingerprinting.
3. The child-placing agency shall assure that information obtained under subsection 2 is provided to the department of human services and shall arrange payment to the bureau of criminal investigation sufficient to defray the cost of securing criminal history record information under this section.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
6. Fingerprints need not be taken and a nationwide background check need not be made if a prospective adoptive parent:
 - a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;

2. Adoption assistance and medical assistance to which this compact applies is that provided from the effective date of an adoption assistance agreement.
3. An adoption assistance agreement must be written, signed by the adoptive parents and on behalf of the state, and include:
 - a. A commitment that adoption assistance is payable without regard for the state of residence of the adoptive parents;
 - b. Provisions identifying the types of care and services toward which the adoption assistance state must make payments;
 - c. A commitment to make medical assistance available to the child in accordance with this chapter;
 - d. A declaration that the agreement is for the benefit of the child, the adoptive parents, and the state, and that it is enforceable by any of them; and
 - e. The date or dates upon which each payment or other benefit is to commence.
4. Any services or benefits provided for a child by this state as the residence state or the adoption assistance state may be facilitated by the department on behalf of another party state. Staff of the department shall assist staff of the child welfare agencies of other party states and the beneficiaries of adoption assistance agreements in assuring prompt and full access to all benefits included in such agreements.
5. Adoption assistance payments made by this state on behalf of a child living in another state must be made on the same basis and in the same amounts as they would be made if the child were living in this state, except that the laws of the adoption assistance program of the state in which the child lives may provide for the payment of higher amounts.

Medical assistance.

1. Except as provided in subsection 2:
 - a. A child, for whom this state has agreed under the terms of an adoption assistance agreement to provide medical assistance, is eligible for medical assistance in this state during the entire period for which the agreement is in effect and shall receive the same benefits as any other child who is covered by the medical assistance program in this state;
 - b. When a child, who is covered by an adoption assistance agreement under which this state is the adoption state, is living in another party state, payment for any medical services and benefits specified under the terms of the adoption assistance agreement, which are not available to the child under the medical assistance program of the residence state, must be made by this state as required by its law; and

Joinder and withdrawal.

1. This state's joinder of the compact is effective upon execution of the compact by the executive director of the department.
2. The compact may be joined by any state.
3. This state may withdraw from the compact only by written notice sent to the appropriate officials of all other party states, but no such notice may take effect until one year after it is given.
4. All adoption assistance agreements outstanding and to which this state is a signatory at the time when its withdrawal from the compact takes effect must continue until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreements involved shall continue to have all rights and obligations conferred or imposed by the compact, and this state shall continue to administer the compact to the extent necessary to fully implement those rights and obligations.

SECTION 26. LEGISLATIVE COUNCIL STUDY - IMPACT OF THE ADOPTION AND SAFE FAMILIES ACT. The legislative council shall consider studying, during the 1999-2000 interim, the impact to the state department of human services, counties, court system, division of juvenile services, adoption agencies, and families of the Adoption and Safe Families Act of 1997 including related state and county staffing requirements, court costs, adoption-related costs and issues, foster care-related impacts, and the impacts on families.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 283

SENATE BILL NO. 2300

(Senators W. Stenehjem, Holmberg)
(Representatives DeKrey, Mahoney)

JUVENILE COURT HEARINGS AND RECORDS

AN ACT to amend and reenact subsection 5 of section 27-20-24 and subsection 6 of section 27-20-51 of the North Dakota Century Code, relating to juvenile court hearings and records; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 27-20-24 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~Except in hearings~~ Hearings are open to the public if the purpose of the hearing is to declare a person in contempt of court, ~~the~~ or to consider a petition alleging an offense identified under subdivision b of subsection 1 of section 27-20-34 or subsection 2 of section 27-20-34. The general public must be excluded from other hearings under this chapter. ~~Only~~ In hearings from which the general public is excluded, only the parties, their counsel, witnesses, victims, and other persons accompanying a party for ~~his~~ that person's assistance, and any other persons as the court finds have a proper interest in the proceedings or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of ~~his~~ that child's delinquency or unruly conduct are being heard.

SECTION 2. AMENDMENT. Subsection 6 of section 27-20-51 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release upon request of general information ~~upon request~~ not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. ~~However, upon a third adjudication of delinquency involving an offense which if committed by an adult would constitute a felony and upon a second adjudication of delinquency involving an offense defined in section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-07, the name of the juvenile adjudicated delinquent may be disclosed~~ Files in the clerk of court's office are open to public inspection if the related hearing was open to the public under section 27-20-24.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on June 1, 1999.

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

Approved April 9, 1999
Filed April 9, 1999