

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2046

Introduced by

Legislative Council

(Judiciary Committee)

1 A BILL for an Act to create and enact a new section to chapter 12.1-18 and five new sections to
2 chapter 14-05 of the North Dakota Century Code, relating to the removal of children from the
3 state, to decrees of separation, and the duty to support children; to amend and reenact sections
4 14-04-04, 14-05-03, 14-05-08, 14-05-10, 14-05-17, 14-05-23, 14-05-25.1, and 14-09-08 of the
5 North Dakota Century Code, relating to decrees of separation and divorce; to repeal sections
6 14-05-11 and 14-05-12 and chapter 14-06 of the North Dakota Century Code, relating to
7 separation from bed and board and grounds for divorce; to provide a penalty; and to declare an
8 emergency.

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

10 **SECTION 1.** A new section to chapter 12.1-18 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Removal of child from state in violation of custody decree - Penalty.** Any person
13 who intentionally removes, causes the removal of, or detains the person's own child under the
14 age of eighteen years outside this state with the intent to deny another person's rights under an
15 existing custody decree is guilty of a class C felony. Detaining the child outside this state in
16 violation of the custody decree for more than seventy-two hours is prima facie evidence that the
17 person charged intended to violate the custody decree at the time of removal.

18 **SECTION 2. AMENDMENT.** Section 14-04-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **14-04-04. Custody of children.** The court shall award the custody of the children of a
21 marriage annulled on the ground of fraud or force to ~~the innocent parent and also may provide~~
22 ~~for their education and maintenance out of the property of the guilty a party based upon the~~
23 best interests and welfare of the child criteria set forth in chapter 14-09.

1 **SECTION 3.** A new section to chapter 14-05 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Grounds for separation.** The court may grant a temporary or permanent decree of
4 separation for any cause for which a divorce may be decreed.

5 **SECTION 4. AMENDMENT.** Section 14-05-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-05-03. Causes for divorce.** Divorces may be granted for any of the following
8 causes:

- 9 1. Adultery.
- 10 2. Extreme cruelty.
- 11 3. Willful desertion.
- 12 4. Willful neglect.
- 13 5. ~~Habitual intemperance.~~ Abuse of alcohol or controlled substances.
- 14 6. Conviction of felony.
- 15 7. ~~Insanity for a period of five years, the insane person having been an inmate of an~~
16 ~~institution for such period, and affected with any psychosis. No divorce may be~~
17 ~~granted because of insanity until after a thorough examination of such insane~~
18 ~~person by three physicians who are recognized authorities on mental diseases,~~
19 ~~one of which physicians must be the superintendent of the state hospital for the~~
20 ~~mentally ill, or the chief medical officer of a veterans administration hospital or~~
21 ~~government institution within or without the state of North Dakota, the other two~~
22 ~~physicians to be appointed by the court before whom the action is pending, all of~~
23 ~~whom must agree that such insane person is incurable. No divorce may be~~
24 ~~granted to any person whose husband or wife is an inmate of an institution, except~~
25 ~~a United States government hospital or institution, in any other than the state of~~
26 ~~North Dakota, unless the person applying for such divorce has been a resident of~~
27 ~~the state of North Dakota for at least five years.~~
- 28 8- Irreconcilable differences.

29 **SECTION 5. AMENDMENT.** Section 14-05-08 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **14-05-08. ~~Habitual intemperance~~ Abuse of alcohol or controlled substances**
2 **defined.** ~~Habitual intemperance~~ Abuse of alcohol or controlled substances is that degree of
3 ~~intemperance from the use of intoxicating drinks, morphine, opium, chloral, cocaine, or other~~
4 ~~like narcotic drugs~~, which disqualifies the person a great portion of the time from properly
5 attending to business; or which reasonably would inflict a course of great mental anguish upon
6 the innocent party. For purposes of this chapter, "controlled substance" means a substance as
7 defined in section 19-03.1-01.

8 **SECTION 6. AMENDMENT.** Section 14-05-10 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **14-05-10. Denial of divorce.** Divorces must be denied upon showing:

- 11 1. ~~Connivance;~~
- 12 2. ~~Collusion;~~
- 13 3. ~~Condonation;~~ or
- 14 4. 2. Limitation and lapse of time.

15 **SECTION 7. AMENDMENT.** Section 14-05-17 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **14-05-17. Residence requirements.** A separation or divorce may not be granted
18 unless the plaintiff in good faith has been a resident of the state for six months next preceding
19 commencement of the action. If the plaintiff has not been a resident of this state for the six
20 months preceding commencement of the action, a separation or divorce may be granted if the
21 plaintiff in good faith has been a resident of this state for the six months immediately preceding
22 entry of the decree of separation or divorce.

23 **SECTION 8.** Three new sections to chapter 14-05 of the North Dakota Century Code
24 are created and enacted as follows:

25 **Separation - Spousal support - Division of property.** Upon the granting of a
26 separation, the court may include in the decree an order requiring a party to pay for spousal
27 support and for the support of any minor children of the parties. Subject to section 14-05-24,
28 the decree may also provide for the equitable division of the property and debts of the parties.

29 **Decree of separation - Effect.** The decree of separation confers upon the parties all
30 the rights of property, business, and contracts as if unmarried and releases both parties from all
31 obligations of maintenance, except as may be required by the decree.

1 **14-05-25.1. Money judgment to secure division of property enforceable by**
2 **contempt proceedings - Exemptions from process not available.** Failure to comply with
3 the provisions of a separation or divorce decree relating to distribution of the property of the
4 parties constitutes contempt of court. A party may also execute on a money judgment, and the
5 obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

6 **SECTION 12. AMENDMENT.** Section 14-09-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **14-09-08. Mutual duty to support children.** Parents shall give their children support
9 and education suitable to the child's circumstances. The court may compel either or both of the
10 parents to provide for the support of their children.

11 **SECTION 13. REPEAL.** Sections 14-05-11 and 14-05-12 and chapter 14-06 of the
12 North Dakota Century Code are repealed.

13 **SECTION 14. EMERGENCY.** Section 1 of this Act is declared to be an emergency
14 measure.