

DOMESTIC RELATIONS AND PERSONS

CHAPTER 144

SENATE BILL NO. 2361

(Senators Krauter, Erbele, T. Mathern)
(Representatives Boehm, Hunskor, Lemieux)

PREGNANCY, CHILDBIRTH, AND ADOPTION INFORMATION

AN ACT to amend and reenact section 14-02.1-02.1 of the North Dakota Century Code, relating to information provided by the state department of health regarding pregnancy, childbirth, and adoption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶² **SECTION 1. AMENDMENT.** Section 14-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02.1. Printed information - Referral service.

1. The state department of health shall ~~cause to be published~~ publish in English, and in every other language that the department determines is the primary language of a significant number of state residents, ~~within one hundred eighty days after July 1, 1991,~~ the following easily comprehensible printed materials:
 - a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials including a toll-free, twenty-four hour a day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.
 - b. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the survival of the fetus and pictures representing the development of a fetus at two-week

⁶² Section 14-02.1-02.1 was also amended by section 10 of Senate Bill No. 2004, chapter 29.

gestational increments. The pictures must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the fetus at the various gestational ages. The materials required under this subsection must be reviewed, updated, and reprinted as needed.

2. The materials required under ~~this section~~ subsection 1 must be available at no cost from the state department of health upon request and in appropriate number to any person, facility, or hospital, and, except for copyrighted material, must be available on the department's internet web site. The department may make the copyrighted material available on its internet web site if the department pays the copyright royalties.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 145

SENATE BILL NO. 2217

(Senators Bercier, Christenson, Lyson, T. Mathern)
(Representatives Cleary, Jensen)

DISCRIMINATORY PRACTICES

AN ACT to create and enact two new sections to chapter 14-02.4 of the North Dakota Century Code, relating to the authority of the department of labor to receive discriminatory practices complaints; to amend and reenact sections 14-02.4-02, 14-02.4-19, 14-02.4-20, 14-02.4-21, 14-02.5-02, 14-02.5-03, 14-02.5-04, 14-02.5-05, 14-02.5-07, 14-02.5-08, 14-02.5-10, and 14-02.5-45 of the North Dakota Century Code, relating to discriminatory practices and the authority of the department of labor; to repeal section 14-02.4-12.1 of the North Dakota Century Code, relating to discriminatory housing practices; to provide a penalty; and to provide for a report to the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Department" means the division of human rights within the department of labor.
4. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
4. 5. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, ~~housing accommodations, property rights,~~ public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, or education; ~~or housing~~;
 - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
 - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or educational ~~or housing~~ environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.
- ~~5.~~ 6. "Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.
- ~~6.~~ 7. "Employer" means a person within the state who employs one or more employees for more than one quarter of the year and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.
- ~~7.~~ 8. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.
- ~~8.~~ 9. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
- ~~9.~~ 10. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.
- ~~40.~~ 11. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.
- ~~44.~~ 12. "Person" means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in

bankruptcy, receiver, labor organization, public body, public corporation, and the state and a political subdivision and agency thereof.

42. 13. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.
43. 14. "Public service" means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.
44. ~~"Real estate broker" and "real estate salesman" mean a real estate broker and real estate salesman as defined in section 43-23-06.1.~~
45. ~~"Real property" means a right, title, interest in or to the possession, ownership, enjoyment, or occupancy of a parcel of land, building situated thereon, or portion of the building.~~
46. 15. "Reasonable accommodations" means accommodations by an employer that do not:
- a. Unduly disrupt or interfere with the employer's normal operations;
 - b. Threaten the health or safety of the individual with a disability or others;
 - c. Contradict a business necessity of the employer; or
 - d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
47. 16. "Sex" includes, ~~but is not limited to,~~ pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
48. 17. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

SECTION 2. Two new sections to chapter 14-02.4 of the North Dakota Century Code are created and enacted as follows:

Duties and powers of department. The department shall receive and investigate complaints alleging violations of this chapter. The department may adopt rules necessary to implement this chapter. Within the limits of legislative appropriations, the department shall foster prevention of discrimination under this chapter through education for the public, employers, providers of public accommodations or services, and commercial lenders on the rights and

responsibilities provided under this chapter and ways to respect those protected rights. The department shall emphasize conciliation to resolve complaints. The department shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The department shall conduct studies relating to the nature and extent of discriminatory practices in this state.

Complaints - Probable cause - Administrative hearing.

1. The department shall investigate complaints of alleged discriminatory practices. An aggrieved person may file a complaint with the department alleging the discriminatory practice. The department may file a complaint. A complaint must be in writing and in the form prescribed by the department.
2. The department shall determine from the facts whether probable cause exists to believe that a discriminatory practice has occurred. If the department determines that no probable cause exists to believe that a discriminatory practice has occurred, the department shall promptly dismiss the complaint.
3. If the department determines that probable cause exists to believe that a discriminatory practice has occurred and is unable to resolve the complaint through informal negotiations or conciliation, the department shall provide for an administrative hearing in the manner provided in chapter 28-32 on the complaint.

SECTION 3. AMENDMENT. Section 14-02.4-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

⁶³ **SECTION 4. AMENDMENT.** Section 14-02.4-20 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-20. Relief. If the department, as the result of an administrative hearing, or the court determines that the respondent has engaged in or is engaging in an unlawful a discriminatory practice, the department or the court may enjoin the respondent from engaging in such the unlawful practice and order such appropriate relief as will be appropriate, which may include, but is not limited to, temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date the complainant has complaint was filed a sworn charge with the equal employment opportunity commission or filed the complaint in the state department or the court. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. In any action or proceeding under this chapter the court may grant, in its discretion, the prevailing party a reasonable attorney's fee as part of the costs. If the court finds that the complainant's allegation of a discriminatory practice is false and not made in good faith, the court shall order the complainant to pay court costs and reasonable attorney's fees incurred by the respondent in responding to the allegation.

⁶⁴ **SECTION 5. AMENDMENT.** Section 14-02.4-21 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Optional mediation by department of labor - Relief - Appeals - Records exempt. ~~The department of labor may receive complaints of discriminating employment practices under this chapter and may investigate the complaints to determine if there is probable cause to believe the complaint is meritorious and, if so, attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter. A complaint received and information by the department under this chapter is an open record. Information obtained during any investigation conducted under this section are chapter is exempt from section 44-04-18 before the institution of any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the department. The commissioner department may disclose to the complainant or the respondent, or attorneys for the complainant or respondent, information obtained under this section during an investigation if deemed determined necessary by the commissioner department for securing an appropriate resolution of a complaint. Any record or information held by the department of labor pursuant to an agreement with any federal agency for the enforcement of fair employment practices is exempt from section 44-04-18, and the The department of labor may disclose to federal officials information obtained under this section chapter if appropriate to carry out the enforcement of fair employment practices pursuant to the necessary for the processing of complaints under an agreement with the agency. The department of labor may not disclose anything said or done as part of the informal negotiation or conciliation efforts relating to a complaint under this section chapter.~~

⁶³ Section 14-02.4-20 was also amended by section 1 of Senate Bill No. 2113, chapter 146.

⁶⁴ Section 14-02.4-21 was also amended by section 2 of Senate Bill No. 2113, chapter 146.

⁶⁵ **SECTION 6. AMENDMENT.** Section 14-02.5-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-02. Sale or rental.

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

SECTION 7. AMENDMENT. Section 14-02.5-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-03. Publication. A person may not make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

SECTION 8. AMENDMENT. Section 14-02.5-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 9. AMENDMENT. Section 14-02.5-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

⁶⁵ Section 14-02.5-02 was also amended by section 1 of House Bill No. 1448, chapter 148.

⁶⁶ **SECTION 10. AMENDMENT.** Section 14-02.5-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 11. AMENDMENT. Section 14-02.5-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 12. AMENDMENT. Section 14-02.5-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to individuals of the same religion or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.
2. This chapter does not prohibit a private club that is not in fact open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or

⁶⁶ Section 14-02.5-07 was also amended by section 2 of Senate Bill No. 2154, chapter 147.

from giving preference to its members, unless membership in the club is restricted because of race, color, or national origin.

3. This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

SECTION 13. AMENDMENT. Section 14-02.5-45 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:
 - a. Because of the individual's race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance and because the individual is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or
 - b. Because the individual is or has been or to intimidate the individual from participating, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described by subdivision a; affording another individual opportunity or protection to so participate; or lawfully aiding or encouraging other individuals to participate, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described in subdivision a.
2. It is a discriminatory practice to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of the individual having exercised or enjoyed, or on account of the individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.
3. An offense under subsection 1 of this section is a class A misdemeanor.

SECTION 14. REPEAL. Section 14-02.4-12.1 of the North Dakota Century Code is repealed.

SECTION 15. COMMISSIONER OF LABOR TO REPORT TO LEGISLATIVE ASSEMBLY. Between the first and tenth legislative days of the fifty-eighth legislative assembly, the commissioner of labor shall submit a report at a public hearing before a standing committee of each house of the legislative assembly. The report must include information and statistics regarding the nature, number, status, and disposition of complaints received by the department of labor under chapters 14-02.4 and 14-02.5.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 146

SENATE BILL NO. 2113

(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

BACKPAY AND DISCRIMINATION COMPLAINTS

AN ACT to amend and reenact sections 14-02.4-20 and 14-02.4-21 of the North Dakota Century Code, relating to the timeframe and type of complaint filed for appropriate relief for backpay, the correct agency for filing a complaint of employment discrimination, and the disclosure of anything said or done as part of informal negotiation or conciliation efforts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶⁷ **SECTION 1. AMENDMENT.** Section 14-02.4-20 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-20. Relief. If the court determines that the respondent has engaged in or is engaging in an unlawful practice, the court may enjoin the respondent from engaging in such unlawful practice and order such appropriate relief as will be appropriate which may include, ~~but is not limited to,~~ temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date the complainant has filed a ~~sworn charge~~ minimally sufficient complaint with the equal employment opportunity commission North Dakota department of labor on a form prescribed by the department or filed the complaint in the state court. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. In any action or proceeding under this chapter the court may grant, in its discretion, the prevailing party a reasonable attorney's fee as part of the costs.

⁶⁸ **SECTION 2. AMENDMENT.** Section 14-02.4-21 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Optional mediation by department of labor - Relief - Appeals - Records exempt. The department of labor may receive complaints of discriminating employment practices under this chapter and may investigate the complaints to determine if there is probable cause to believe the complaint is meritorious and, if so, attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter. A complaint received and information obtained during any investigation conducted under this section are exempt from section 44-04-18 before the institution of any judicial proceedings under this chapter. The commissioner may disclose to the complainant

⁶⁷ Section 14-02.4-20 was also amended by section 4 of Senate Bill No. 2217, chapter 145.

⁶⁸ Section 14-02.4-21 was also amended by section 5 of Senate Bill No. 2217, chapter 145.

or the respondent, or attorneys for the complainant or respondent, information obtained under this section if deemed necessary by the commissioner for securing an appropriate resolution of a complaint. Any record or information held by the department of labor pursuant to an agreement with any federal agency for the enforcement of fair employment practices is exempt from section 44-04-18, and the department of labor may disclose to federal officials information obtained under this section if appropriate to carry out the enforcement of fair employment practices pursuant to the agreement. The department of labor may not disclose anything said or done as part of the informal negotiation or conciliation efforts under this section except to the federal equal employment opportunity commission as needed for proper processing and closure.

Approved April 17, 2001

Filed April 17, 2001

CHAPTER 147

SENATE BILL NO. 2154

(Political Subdivisions Committee)
(At the request of the Labor Commissioner)

HOUSING DISCRIMINATION

AN ACT to create and enact section 14-02.5-46 of the North Dakota Century Code, relating to exempt records in housing discrimination complaints filed with the department of labor; to amend and reenact subsections 1 and 3 of section 14-02.5-01, sections 14-02.5-07, 14-02.5-09, 14-02.5-11, 14-02.5-18, and 14-02.5-21, subsection 2 of section 14-02.5-22, section 14-02.5-24, subsection 2 of section 14-02.5-25, subsection 2 of section 14-02.5-26, section 14-02.5-36, and subsections 3 and 5 of section 14-02.5-39 of the North Dakota Century Code, relating to housing discrimination complaints, investigations, aggrieved parties, and exemptions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 14-02.5-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "~~Aggrieved individual~~" "Aggrieved person" includes any ~~individual person~~ who claims to have been injured by a discriminatory housing practice or believes that the ~~individual person~~ will be injured by a discriminatory housing practice that is about to occur.
3. "Conciliation" means the informal negotiations among an aggrieved ~~individual person~~, the respondent, and the department to resolve issues raised by a complaint or by the investigation of the complaint.

⁶⁹ **SECTION 2. AMENDMENT.** Section 14-02.5-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

⁶⁹ Section 14-02.5-07 was also amended by section 10 of Senate Bill No. 2217, chapter 145.

transactions involving the sale of any dwelling or any interest in a dwelling or has participated as agent, other than in the sale of the person's own personal residence, in providing sales facilities or sales services in two or more transactions involving the sale of any dwelling or any interest in a dwelling. Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

SECTION 3. AMENDMENT. Section 14-02.5-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-09. Sales and rentals exempted.

1. Sections 14-02.5-02 through 14-02.5-08 do not apply to the sale or rental of a single-family house sold or rented by the owner if the owner does not own more than three single-family houses at any one time or own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time. In addition, the house must be sold or rented without the use of the sales or rental facilities or services of a licensed real estate broker, agent, or realtor, or of a person in the business of selling or renting dwellings, or of an employee or agent of a ~~licensed any such~~ broker, agent, or realtor, ~~or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families~~ person; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by section 14-02.5-03. The exemption provided in this subsection applies only to one sale or rental in a twenty-four-month period, if the owner was not the most recent resident of the house at the time of the sale or rental. For the purposes of this subsection, a person is in the business of selling or renting dwellings if the person:
 - a. Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest in a dwelling, or;
 - b. Within the preceding twelve months, has participated as agent, other than in the sale of the person's own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest in a dwelling, or;
 - c. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.
2. Sections 14-02.5-02 through 14-02.5-08 do not apply to the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.
3. ~~The exemption in subsection 1 applies only to one sale or rental in a twenty-four-month period, if the owner was not the most recent resident of the house at the time of the sale or rental.~~

SECTION 4. AMENDMENT. Section 14-02.5-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-11. Housing for elderly exempted.

1. The provisions of this chapter relating to familial status and age do not apply to housing that the secretary of housing and urban development determines is specifically designed and operated to assist elderly individuals under a federal program; the department determines is specifically designed and operated to assist elderly individuals under a ~~federal or~~ state program; is intended for, and solely occupied by, individuals sixty-two years of age or older; or is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit as determined by department rules. In determining whether housing qualifies as housing for elderly ~~under this section~~ because it is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit, the department shall adopt rules that require at least the following factors:
 - a. ~~The existence of significant facilities and services specifically designed to meet the physical or social needs of older individuals or, if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older individuals;~~
 - ~~b.~~ That at least eighty percent of the units are occupied by at least one individual fifty-five years of age or older per unit; and
 - ~~c.~~ b. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for individuals fifty-five years of age or older.
2. Housing may not be considered to be in violation of the requirements for housing for elderly under this section by reason of:
 - a. Individuals residing in the housing as of October 1, 1999, who do not meet the age requirements of this section, provided that new occupants of the housing meet the age requirements; or
 - b. Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.

SECTION 5. AMENDMENT. Section 14-02.5-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-18. Complaint.

1. The department shall investigate complaints of alleged discriminatory housing practices. An aggrieved ~~individual~~ person may file a complaint with the department alleging the discriminatory housing practice. The department may file a complaint. A complaint must be in writing; ~~under oath, and in the form~~ and must contain such information and be in such form as prescribed by the department. A complaint must be filed on or before the first anniversary of the date the alleged discriminatory

housing practice occurs or terminates, whichever is later. A complaint may be amended at any time.

2. On the filing of a complaint, the department shall give the aggrieved ~~individual person~~ notice that the complaint has been received, advise the aggrieved ~~individual person~~ of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of the filing of the complaint or the identification of an additional or substitute respondent under section ~~14-02.5-22~~ 14-02.5-21, serve on each respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter and a copy of the original complaint.

SECTION 6. AMENDMENT. Section 14-02.5-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 7. AMENDMENT. Subsection 2 of section 14-02.5-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A conciliation agreement is public information unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Statements made or actions taken in the conciliation may not be made public by the department or used as evidence in a subsequent proceeding under this chapter without the written consent of ~~concerned persons~~ the parties to the conciliation. ~~After completion of the department's investigation, the department shall make available to the aggrieved individual and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.~~

SECTION 8. AMENDMENT. Section 14-02.5-24 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 9. AMENDMENT. Subsection 2 of section 14-02.5-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 10. AMENDMENT. Subsection 2 of section 14-02.5-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Upon~~ Within three days after issuing a charge, the department shall send a copy of the charge with information about the election under section 14-02.5-30 to each respondent and each aggrieved ~~individual~~ person on whose behalf the complaint was filed.

SECTION 11. AMENDMENT. Section 14-02.5-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 12. AMENDMENT. Subsections 3 and 5 of section 14-02.5-39 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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

SECTION 13. Section 14-02.5-46 of the North Dakota Century Code is created and enacted as follows:

14-02.5-46. Records exempt. A complaint filed with the department under section 14-02.5-18 is an open record. Information obtained during an investigation conducted by the department under this chapter is exempt from section 44-04-18 prior to the administrative closure of a complaint by the department. The commissioner may disclose to the complainant or the respondent, or representatives of the complainant or respondent, information obtained under this section if deemed

necessary by the commissioner for securing an appropriate resolution of a complaint.
Investigative working papers are exempt from section 44-04-18.

SECTION 14. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 148

HOUSE BILL NO. 1448

(Representatives Kasper, Renner, Ruby, Sandvig)
(Senators Christmann, Mutch)

UNMARRIED COUPLE PROPERTY RENTAL

AN ACT to create and enact a new subsection to section 14-02.5-02 of the North Dakota Century Code, relating to rental property for unmarried couples.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁰ **SECTION 1.** A new subsection to section 14-02.5-02 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Nothing in this chapter prevents a person from refusing to rent a dwelling to two unrelated individuals of opposite gender who are not married to each other.

Approved March 27, 2001
Filed March 27, 2001

⁷⁰ Section 14-02.5-02 was also amended by section 6 of Senate Bill No. 2217, chapter 145.

CHAPTER 149

SENATE BILL NO. 2046

(Legislative Council)
(Judiciary Committee)

DIVORCE AND CHILD CUSTODY AND SUPPORT

AN ACT to create and enact a new section to chapter 12.1-18 and five new sections to chapter 14-05 of the North Dakota Century Code, relating to the removal of children from the state, to decrees of separation, and the duty to support children; to amend and reenact sections 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 North Dakota Century Code, relating to decrees of separation and divorce; to repeal sections 14-05-11 and 14-05-12 and chapter 14-06 of the North Dakota Century Code, relating to separation from bed and board and grounds for divorce; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

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

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

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

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

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

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

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

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

1. ~~Connivance;~~
2. ~~Collusion;~~
3. ~~Condonation;~~ or
4. 2. Limitation and lapse of time.

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

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

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

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

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

Revocation of decree of separation - Divorce granted. At any time after a decree for separation has been granted, the court may revoke the decree based upon any regulations or restrictions the court imposed in the decree. Application for revocation may be made by either party to the decree. The party making the application for revocation shall provide to the other party to the decree at least ten days' and not more than twenty days' notice of the application. Service must be made in the same manner as service of a summons in a civil action. If it appears to the court at the hearing of the application that reconciliation between the parties to the marriage is improbable, the court shall revoke the separation decree and, in lieu of that decree, shall render a decree divorcing the parties. If the court has not previously done so, the court shall provide for the equitable division of the property, shall make orders with respect to any minor children, and may provide for the payment of support to either party by the other.

SECTION 9. AMENDMENT. Section 14-05-23 of the North Dakota Century Code is amended and reenacted as follows:

14-05-23. Temporary support, attorney fees, and custody. During any time in which an action for separation or divorce is pending, the court, upon application of a party, may issue an order requiring a party to pay such support as may be necessary for the support of a party and minor children of the parties and for the payment of attorney fees. The court in the order may award custody of minor children to a party. The order may be issued and served in accordance with the North Dakota Rules of Court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order which is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

SECTION 10. A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:

Spousal support. Taking into consideration the circumstances of the parties, the court may require one party to pay spousal support to the other party for any period of time. The court may modify its spousal support orders.

SECTION 11. AMENDMENT. Section 14-05-25.1 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 150

SENATE BILL NO. 2045

(Legislative Council)
(Judiciary Committee)

PROPERTY DIVISION IN DIVORCE

AN ACT to amend and reenact sections 14-05-24 and 14-09-06.4 of the North Dakota Century Code, relating to the division of property in divorce proceedings and immunity for guardians ad litem and child custody investigators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

14-05-24. ~~Permanent alimony~~ - Division of property.

1. When a divorce is granted, the court shall make ~~such an~~ an equitable distribution of the ~~real and personal~~ property and debts of the parties ~~as may seem just and proper, and may compel either of the parties to provide for the maintenance of the children of the marriage, and to make such suitable allowances to the other party for support during life or for a shorter period as to the court may seem just, having regard to the circumstances of the parties respectively. The court from time to time may modify its orders in these respects.~~
2. The court may redistribute property in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court, or the party fails to comply with the terms of a court order distributing property and debts.

SECTION 2. AMENDMENT. Section 14-09-06.4 of the North Dakota Century Code is amended and reenacted as follows:

14-09-06.4. Appointment of guardian ad litem or child custody investigator for children in custody, support, and visitation proceedings - Immunity. In any action for an annulment, divorce, legal separation, or other action affecting marriage, where either party has reason for special concern as to the future of the minor children, and in ~~actions affecting the marriage relationship~~ any action where the custody or visitation of ~~such~~ children is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the children concerning custody, support, and visitation. The court, in its discretion, may appoint a guardian ad litem or child custody investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the children's best interests. If appointed, the child custody investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the guardian ad litem or child custody investigator fee established by the court. If neither ~~of the parties~~ of the parties ~~are~~ party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for such payment. Any guardian ad litem or child custody investigator appointed under this section who acts

in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or child custody investigator is a disputable presumption.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 151

SENATE BILL NO. 2281

(Senators Watne, Lyson)
(Representatives Disrud, Mahoney, Wrangham)

PROTECTION ORDERS

AN ACT to create and enact a new subsection to section 14-07.1-02 of the North Dakota Century Code, relating to the issuance of a protection order based upon actions occurring outside the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 14-07.1-02 of the North Dakota Century Code is created and enacted as follows:

Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 152

SENATE BILL NO. 2160

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT

AN ACT to create and enact a new section to chapter 14-09 and a new section to chapter 50-09 of the North Dakota Century Code, relating to exempting child support payments from legal process and exempting child support agencies from certain statutory fees; to amend and reenact sections 14-08.1-05 and 14-09-08.16, subsections 1 and 5 of section 14-09-09.3, subsection 2 of section 28-21-05.2, subsection 3 of section 35-34-04, subsections 3 and 5 of section 50-09-08.2, and subsection 2 of section 50-09-14 of the North Dakota Century Code, relating to technical and conforming amendments to child support laws, removal of time limitations on the duration of liens and the issuance of executions, requests for information from an income payor, time for commencement of a contempt proceeding against an income payor, clarifying the contents of an administrative writ of execution, removal of the requirement that the secretary of state charge vessel lien fees in past-due child support matters, and providing for review of child support liens; and to repeal section 35-34-11 of the North Dakota Century Code, relating to review of child support liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-08.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-08.1-05. Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:
 - a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, and must be entered in the judgment docket, upon filing by the judgment creditor or the judgment creditor's assignee of a written request accompanied by a verified statement of arrearage or certified copy of the payment records of ~~the clerk of district court~~ maintained under section ~~14-09-08.1~~ 50-09-02.1 and an affidavit of identification of the judgment debtor, and otherwise enforced as a judgment. ~~The due and unpaid payments and any judgment entered in the judgment docket pursuant to this section are not subject to the statutes of limitations provided in chapter 28-01, nor may such judgment be canceled pursuant to section 28-20-35;~~
 - b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and
 - c. Not subject to retroactive modification.

2. The due and unpaid payments and any judgment entered in the judgment docket pursuant to this section are not subject to the statutes of limitation provided in chapter 28-01. Such judgments may not be canceled pursuant to section 28-20-35. For such judgments, the duration of a lien under section 28-20-13 and the period during which an execution may be issued are not subject to the time limitations in chapters 28-20 and 28-21.
3. Failure to comply with the provisions of a judgment or order of the court for the support of a child constitutes contempt of court. All remedies for the enforcement of judgments apply. A party or the party's assignee may also execute on the judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.
3. 4. This section applies to all child support arrearages, whether accrued before or after the effective date of this section.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Child support exempt from process. A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation.

SECTION 3. AMENDMENT. Section 14-09-08.16 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.16. Requests for information from income payor.

1. A child support agency or the public authority may mail a request for information to the income payor in any matter in which it secures reliable information that the income payor may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.
2. Within ten days after receipt of a request for information issued under subsection 1, an income payor shall provide the requester with a written statement informing the requester whether or not the income payor is, or within the thirty days immediately preceding receipt of the request has been, an income payor with respect to that obligor. If the income payor is, or within the previous thirty days has been, an income payor with respect to that obligor, the income payor shall furnish information to the requester including:
 - a. The amount of any income currently paid to the obligor, calculated on a monthly basis;
 - b. The total amount of income paid to the obligor in the ~~six~~ twelve months preceding the month in which the request is received;
 - c. Information regarding any health insurance that may be made available to the obligor's children through the income payor;
 - d. The social security number under which payment of any income by the income payor to the obligor is reported;

- e. The obligor's address; and
 - f. If the income payor is no longer an income payor with respect to that obligor, the date of last payment and any forwarding address.
3. Any income payor failing to comply with any requirements of this section may be punished ~~by the court~~ for ~~civil~~ contempt of court. The court shall first afford such income payor a reasonable opportunity to purge itself of contempt.
 4. A proceeding against an income payor under this section may be commenced upon motion by a child support agency or the public authority and must be commenced within ninety days after the income payor's act or failure to act upon which such proceeding is based.

SECTION 4. AMENDMENT. Subsections 1 and 5 of section 14-09-09.3 of the North Dakota Century Code are amended and reenacted as follows:

1. Any income payor failing to comply with ~~any requirements in this section~~ or section 14-09-09.16 may be punished ~~by the court~~ for ~~civil~~ contempt of court. The court shall first afford such income payor a reasonable opportunity to purge itself of such contempt.
5. Any contempt proceeding against an income payor under this section must be commenced within ~~ninety~~ one hundred and eighty days after the income payor's act or failure to act upon which such proceeding is based.

SECTION 5. AMENDMENT. Subsection 2 of section 28-21-05.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the writ may omit:
 - a. The seal of the court;
 - b. The subscription of the clerk of that court;
 - c. The attestation in the name of the judge of the court that entered the judgment;
 - d. A statement of the courts and counties to which the judgment has been transcribed; and
 - ~~d.~~ e. If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county.

SECTION 6. AMENDMENT. Subsection 3 of section 35-34-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the register of deeds. ~~The secretary of state shall charge~~

the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under chapter 41-09.

SECTION 7. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support agencies exempt from certain fees. The register of deeds and secretary of state may not charge or collect any fee otherwise prescribed by law from a state or county agency engaged in the establishment of paternity or the establishment, modification, or enforcement of child support orders.

⁷¹ **SECTION 8. AMENDMENT.** Subsections 3 and 5 of section 50-09-08.2 of the North Dakota Century Code are amended and reenacted as follows:

3. a. As provided in title IV-D, a person is immune from suit or any liability under any federal or state law:
 - (1) For any disclosure of information, in any form, made under this section, to the state agency, a county agency, or an official, employee, or agent of either;
 - (2) For encumbering or surrendering any assets held by a financial institution in response to a notice of lien or an execution issued by the state agency as provided in ~~subsection 7 of section 23-02.1-19~~ 28-21-05.2 and chapter ~~34-15~~ 35-34; or
 - (3) For any other action taken in good faith to comply with the requirements of this section.
- b. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.
5. All employing or contracting entities within this state, including for-profit, nonprofit, and governmental employers, shall provide information on the employment, compensation, and benefits of any individual employed by such entity as an ~~employer~~ employee or contractor within ten days of a request made under subsection 1 or made by the agency of any other state charged with administration of programs under title IV-D. An entity that receives a request for which a response is required by this section is subject to a fiscal sanction of twenty-five dollars for each day, beginning on the eleventh day after the request is made and not complied with.

SECTION 9. AMENDMENT. Subsection 2 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25 ~~or~~, this chapter, or chapter

⁷¹ Section 50-09-08.2 was also amended by section 8 of Senate Bill No. 2327, chapter 232.

35-34 to establish or enforce a child support order may seek review of the action of the state agency or child support agency in the court of this state that issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another state, any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25 or, this chapter, or chapter 35-34 to enforce that order may seek review of the action of the state agency or child support agency in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions of the state agency or child support agency in a proceeding under chapter 28-32.

SECTION 10. REPEAL. Section 35-34-11 of the North Dakota Century Code is repealed.

Approved March 29, 2001
Filed March 29, 2001

CHAPTER 153

SENATE BILL NO. 2047

(Legislative Council)
(Judiciary Committee)

GRANDPARENT VISITATION

AN ACT to amend and reenact section 14-09-05.1 of the North Dakota Century Code, relating to grandparental rights of visitation of unmarried minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-05.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-05.1. Grandparental rights of visitation to unmarried minors - Mediation or arbitration. The grandparents and great-grandparents of an unmarried minor ~~must~~ may be granted reasonable visitation rights ~~and the great-grandparents may be granted reasonable visitation rights~~ to the minor by the district court upon ~~application by the grandparents or great-grandparents unless a finding is made that visitation is not~~ would be in the best interests of the minor and would not interfere with the parent-child relationship. ~~Visitation rights of grandparents to an unmarried minor are presumed to be in the best interest of the minor.~~ The court shall consider the amount of personal contact that has occurred between the grandparents or great-grandparents and the minor and the minor's parents. This section does not apply to agency adoptions or when the minor has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted under this section before the adoption of the minor may be terminated upon the adoption if termination of the rights is in the best interest of the minor. An application for visitation rights under this section may be considered by the district court in conjunction with a divorce proceeding involving the parent of the minor child. If any district court of this state retains jurisdiction over the custodial placement of the minor child or children by virtue of any prior proceedings, the rights conferred by this section may be enforced by the grandparents or the great-grandparents through motion under the prior proceeding. If no district court otherwise has jurisdiction, a proceeding to enforce grandparental rights may be brought against the custodial parent as a civil action and venued in the county of residence of the minor child. The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great-grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 154**SENATE BILL NO. 2373**

(Senators Dever, Cook)

CHILD SUPPORT INCOME DETERMINATION

AN ACT to create and enact a new subdivision to subsection 1 of section 14-09-09.7 of the North Dakota Century Code, relating to income determination for child support; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 14-09-09.7 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Authorize a rebuttal of the presumption provided in subsection 3 in cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.

SECTION 2. EFFECTIVE DATE. This Act is effective on the earlier of August 1, 2003, or the date the department of human services certifies to the legislative council as the effective date of guidelines adopted which implement section 1 of this Act, as provided by subsection 4 of section 14-09-09.7.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 155

SENATE BILL NO. 2384

(Senator Watne)

CHILD ABUSE AND NEGLECT

AN ACT to amend and reenact sections 14-09-22 and 50-25.1-11 of the North Dakota Century Code, relating to child abuse and neglect and to authorized disclosures of confidential records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-22. Abuse or neglect of child - Penalty.

1. Except as provided in subsection 2, a parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony:
 - a. Inflicts, or allows to be inflicted, upon the child, bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 or mental injury.
 - b. Fails to provide 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.
 - c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
 - d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under subdivision a of subsection 1 is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.

SECTION 2. AMENDMENT. Section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures. All reports made under this chapter, as well as any other information obtained, are confidential and must be made available to:

1. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
2. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information in order to determine whether to place ~~such~~ the child in protective custody.
3. Authorized staff of the department, appropriate county social service boards, and appropriate state and local child protection team members.
4. Any person who is the subject of a report; provided, however, that the identity of persons reporting under this chapter is protected.
5. Public officials and their authorized agents who require ~~such~~ the information in connection with the discharge of their official duties.
6. A court whenever ~~it~~ the court determines that the information is necessary for the determination of an issue before the court.
7. A person engaged in a bona fide research purpose; provided, however, that no information identifying the subjects of a report is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
9. Parents or a legally appointed guardian of a child who is suspected of being, or having been, abused or neglected, provided the identity of persons making reports or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 156

HOUSE BILL NO. 1168

(Human Services Committee)

(At the request of the Department of Human Services)

UNPAID CHILD SUPPORT INTEREST

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to a statement regarding interest on unpaid child support; and to amend and reenact subsection 6 of section 14-09-25 of the North Dakota Century Code, relating to interest on unpaid child support.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 14-09-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding section 28-20-36, the state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Any disbursement made in error is not a gift and must be repaid. The public authority may take any action not inconsistent with law to secure repayment of any disbursement made in error. Interest accrued on an unpaid judgment for child support obligation is child support. To the extent consistent with the requirements of title IV-D, payments a payment received on judgments for with respect to a child support arrearage must first be applied to accrued interest on the earliest arrearage, and then to the principal of that arrearage. The public authority may calculate judgment interest accrued only on child support obligations that first became arrearages after July 1, 2002. The public authority shall enter in its records judgment interest on child support obligations that first became arrearages on or before July 1, 2002, only if a court has ordered the interest amount calculated by some individual or entity other than the public authority and approved the calculated amount. For purposes of this subsection, arrearage means an unpaid child support obligation that was due in a month prior to the current month.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Child support order - Required interest statement. Each judgment or order requiring the payment of child support must include a statement that the child support obligation will accrue interest if not timely paid. Accrual of interest and validity of the order are not affected by a failure to include the statement required by this section.

Approved April 5, 2001
Filed April 5, 2001